



Public Utilities

FORTNIGHTLY



April 13, 1939

BONNEVILLE RATES AND MARKET

By Ernest R. Abrams

« »

Agonies in Equity

By Jonathan Brooks

« »

The Meaning of Federal Aid

By Albert W. Atwood

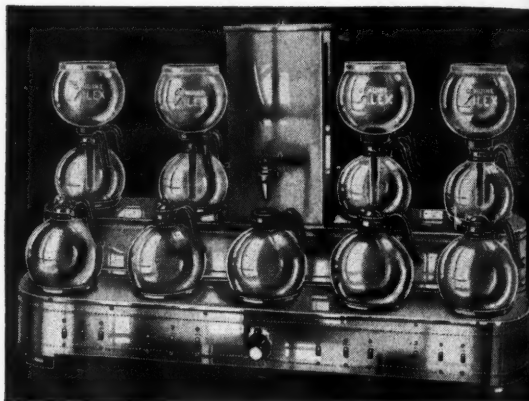
78

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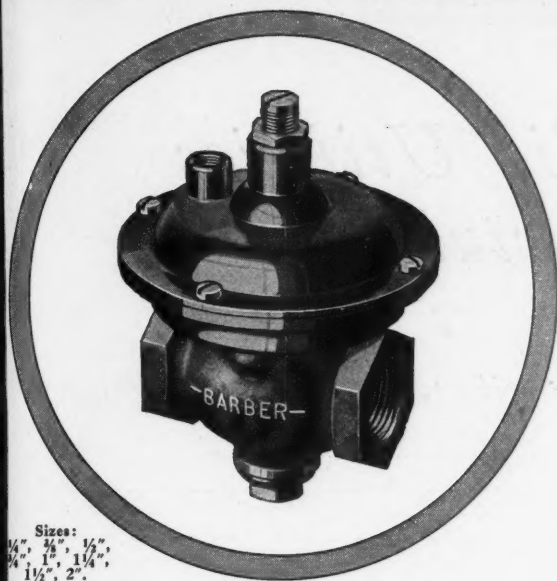
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Public Utilities Fortnightly



VOLUME XXIII

April 13, 1939

NUMBER 8

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Q This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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APR. 13, 1939

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MECHANICAL RACK RAKES
GATES—HOISTS
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Illustrated: Cat. No. W-300 PIT, cabinet for housing three potential and three current transformers. Standard porcelain bushings and steel crossarm hangers included.



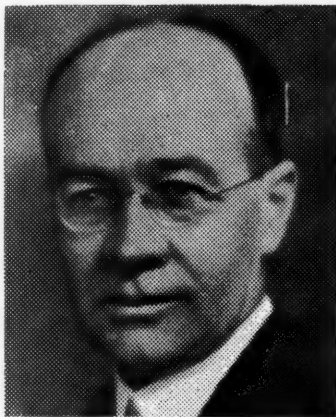
WALKER ELECTRICAL CO.
Atlanta ————— **Georgia**



Pages with the Editors

THE passing of J. D. Ross, called by President Roosevelt "one of the greatest Americans of our generation," leaves a serious gap in the important hydroelectric power plans for the Pacific Northwest. Not only does the Bonneville administration feel the sudden loss of the master helmsman at a most critical period of its development, but his first love, Seattle City Light, is also bereft of his guiding hand. Still another giant development further up the Columbia—the Grand Coulee project, yet in swaddling clothes—is left without an engineering godfather who had some very definite plans for its future.

ALTHOUGH his own responsibility was officially restricted to Bonneville and its coordination with Seattle City Light, Ross had figured out, in his own mind at least, just how he was going to make this great combination of public projects eventually come out—come out together, and come out on top financially. Maybe these ideas would not have worked out exactly as he planned, even had Ross been spared by the Great Engineer. Maybe he would have witnessed the vindication of his assumption that power demand



ALBERT W. ATWOOD

What justification is there for Federal spending of other people's money for local purposes?

(SEE PAGE 471)



ERNEST R. ABRAMS

Bonneville puts electric rates on an American hotel basis—take it or leave it.

(SEE PAGE 451)

duplicates every seven years and would in this instance be augmented by industrial expansion in the Columbia valley country.

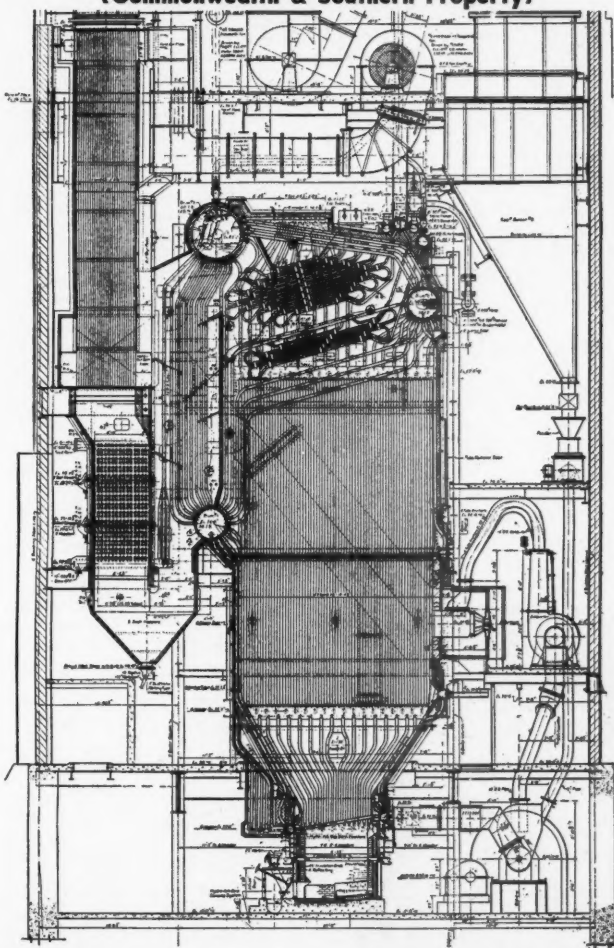
MORE serious and practical questions confront the Bonneville administration today. Ross has probably left a rich heritage of blue prints and outlines so that his charted course can be followed to some extent. But that would be more or less like navigation by blind reckoning. Ross is no longer on the bridge to make corrections and revisions in the light of passing circumstances and new or unforeseen developments.

ONLY a few days ago the governor of Oregon signed a law authorizing the financing of public power districts in that state which did not go nearly so far as Ross recommended and is even attacked as obstructive to rapid development of public district markets for Bonneville power. Only a few weeks ago the Washington legislature adjourned in a deadlock over similar legislation.

IN addition to these upsets, there is increasing opposition in Congress to the Federal administration's demand for further large

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300,000 lbs. steam per hour, 900 lbs. pressure, 875° F. Steam Temperature

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appropriations with which to complete Bonneville and rush Grand Coulee. Resurgent Republican political strength in both Washington and Oregon, and political feuds within the Democratic fold, complicate the outlook. The possibility of a sharp change of Federal policies at Washington following next year's election may eventually require substantial alteration in the policy blue prints for this area. The leading article in this issue is an attempt to evaluate the Bonneville situation as of today. It is a contribution of ERNEST R. ABRAMS, public utility editor of *The Financial Reporter*, who will be readily recalled for his previous articles in this magazine.

PROBABLY the most serious problem with which Mr. Ross had to contend in building a market for Bonneville power, and with which the Bonneville administration probably will have to contend for years to come, is the revenue bond. This fairly new arrival in the field of publicly owned utility financing was at the bottom of the recent legislative wrangles over public utility district laws in both Washington and Oregon. Although economists may question it, and hard-boiled investors may view it with contempt, the revenue bond finds much favor in the eyes of the political promoter. It is the sugar coating with which he can often make an otherwise unwilling municipality swallow his public ownership pills with the assurance that the taxpayers assume none of the risk.

BUT like most dollar-down-and-dollar-when-I've-got-it plans for liberalizing credit purchases, revenue bonds may spread the pur-

chaser's equity very thin and over a considerable period of time. And like the drawn-out conditional sales purchase of an automobile, the buyer of a public utility property under such an arrangement may have to sacrifice depreciation, amortization, and pay a good bit of interest in the bargain before the title finally comes home. When that day finally arrives, it is a fortunate public agency that finds itself still in possession of utility property that is not worn out to some extent.

JONATHAN BROOKS, who writes an article in this issue (beginning page 464), is the pen name of John Calvin Mellet, former newspaper writer of Indianapolis, New York, and Washington, and has been doing advertising work and writing fiction for the last several years. He is author of two novels touching on public ownership of utilities and was formerly an associate professor of the University of Maine. He now resides in Indianapolis.

ALBERT W. ATWOOD, whose article on the equitable distribution of Federal aid also appears in this issue (page 471), will be recalled by many readers for his long service as editorial writer on the *Saturday Evening Post* (1927-37). He is a graduate of Amherst College ('03) and sometime lecturer on financial subjects at the New York University School of Commerce and the Columbia University School of Journalism. In addition to his numerous contributions to the *Post*, Mr. Atwood has served editorially with the *New York Sun* ('03-'06), *New York Press* ('06-'12), *McChures Magazine* ('13-'17), *Review of Reviews* ('12-'15), and *Harpers Weekly* ('14). Since 1927 he has been a resident of the District of Columbia and is active in educational and literary circles in this city.

AMONG the important decisions reprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE burden of proof rests upon a gas company to establish the fact that a proposed rate increase will result in greater profit, according to the view of the Massachusetts Department of Public Utilities. (See page 129.)

THE Louisiana commission has asserted jurisdiction over an interstate natural gas company. (See page 145.)

THE next number of this magazine will be out April 27th.



JONATHAN BROOKS

Public ownership on the instalment plan may turn out to be expensive business.

(SEE PAGE 464)

APR. 13, 1939

The Editors



The No. 1 gangster in Public Relations work is Red Tape. "Red" puts the prospects on the spot the minute they apply for service.

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are being selected for leading Industrial and Central Station Plants

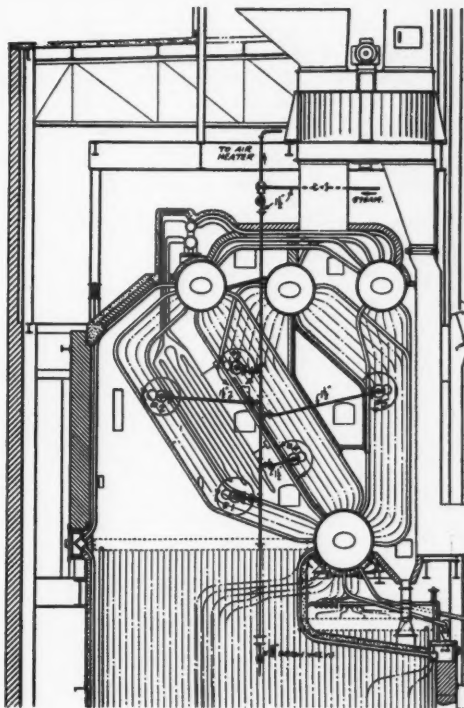
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They readily meet high temperature conditions without makeshift in design, materials or parts.

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Remarkable Remarks

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—MONTAIGNE



EDITORIAL STATEMENT
Broadcasting.

"Radio hasn't yet met a competitive situation that it couldn't beat."

PERCY TETLOW
*Chairman, National Bituminous
Coal Commission.*

"The basic resource of this country is coal and will be for 500 years."

BOOTH MOONEY
*Associate Editor, The Texas
Weekly.*

"The total cost of operating the Texas state government has increased 670 per cent in the last twenty years."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"There will be more use for coal when the country is developed by hydroelectric power than there was before it was developed."

EDITORIAL STATEMENT
The Traffic World.

"The railroads pay more than one hundred million dollars in school taxes annually, which is enough to educate 1,300,000 children each year."

EDITORIAL STATEMENT
The Nation.

"The good that Presidents do is often interred with their administrations. It is their choice of Supreme Court Justices that lives after them."

EDWARD J. HEFFRON
Writing in The Commonwealth.

"... the same safeguards of the interest of the public must be set up in the case of radio as in the case of public utilities like street railway companies."

HOWARD BRUBAKER
Writing in The New Yorker.

"The TVA decision is another victory for the New Deal. At this rate, the administration will soon be referring to the Justices as 'the benigold men.'"

H. N. RODENBAUGH
*Vice President, Day & Zimmer-
man, Inc.*

"The railroad's horizon is not far distant now. About a third of the total mileage is in bankruptcy and only a favored few now are earning their dividends."

A. C. G. HAMMESFAHR
President, Metropolitan Weekly.

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U. S. Representative from Oregon.

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EDITORIAL STATEMENT
Barron's.

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RICHARD L. NEUBERGER
Writing in The New Republic.

"When completed, which will be about 1941, after eight years' work, Grand Coulee will be four times as big as the Great Pyramid and three and one-half times as big as Boulder dam."

GUY C. HAMILTON
Vice President and General Manager, McClatchy Newspapers.

"I feel radio is such a good medium of promotion that the [newspaper] publisher would be justified in using stations not owned by him and paying for the time to advertise his product."

WILLIAM M. JEFFERS
President, Union Pacific Railroad.

"I am in favor of regulation by some responsible group which shall act as Referee—capitalize that word. We don't want Federal control which means interference and ends in ruin."

FRANK R. MCNINCH
Chairman, Federal Communications Commission.

"As far as I know, no one has advocated government censorship [of radio broadcasts]. But if, perchance, any such measure should be brought before the Congress for consideration, conviction would impel me to do battle against it."

CLAUDE V. PARSONS
U. S. Representative from Illinois.

"Nature gave us the Great Lakes, but it took more than a quarter of a billion dollars of the taxpayers' money, yours and mine, to make their connecting channels navigable and possible for the development of the great tonnage upon these bodies of water."

WILLIAM O. DOUGLAS
Former Chairman, Securities and Exchange Commission.

"... I have tried to give you some insight into the nature of this new governmental creature we call the administrative agency. It is the mechanism of democratic government whereby capitalism can discipline and preserve itself. It is equipped to meet business on business terms. It is in its infancy, but it is here to stay."

DONALD D. CONN
Executive Vice President, Transportation Association of America.

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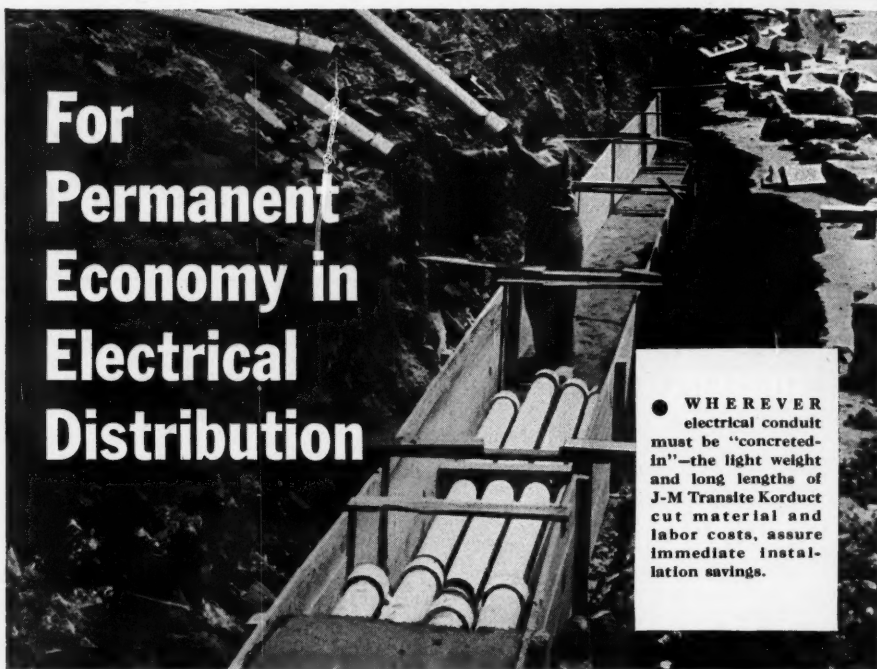
suitable combinations of boiler, fuel burning and related equipment for any fuel and for capacities from 1000 to over 1,000,000 lb. of steam per hr. Also complete units of standard design known by the trade names C-E Steam Generator, Type VU, and Combustion Steam Generator.

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COMBUSTION ENGINEERING

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INTERNATIONAL TRUCKS

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CHICAGO

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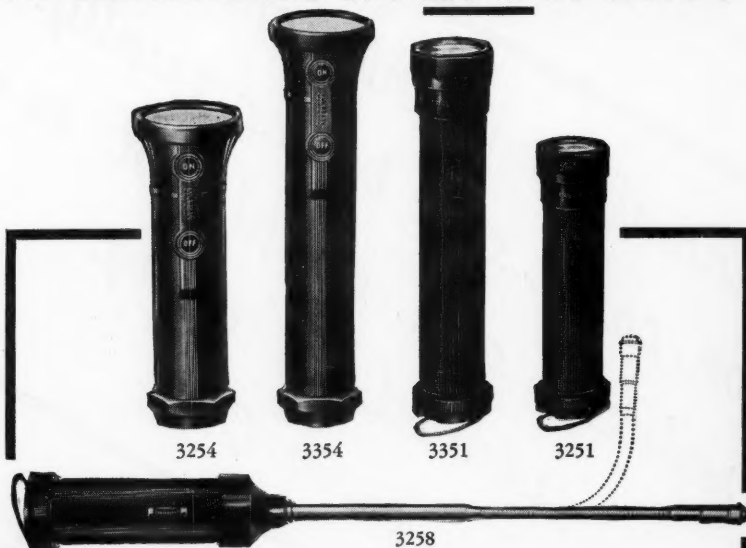
NEW YORK

Canadian Hoosier Engineering Company, Ltd.
Montreal

ERECTORS OF TRANSMISSION LINES

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Which one do You want?




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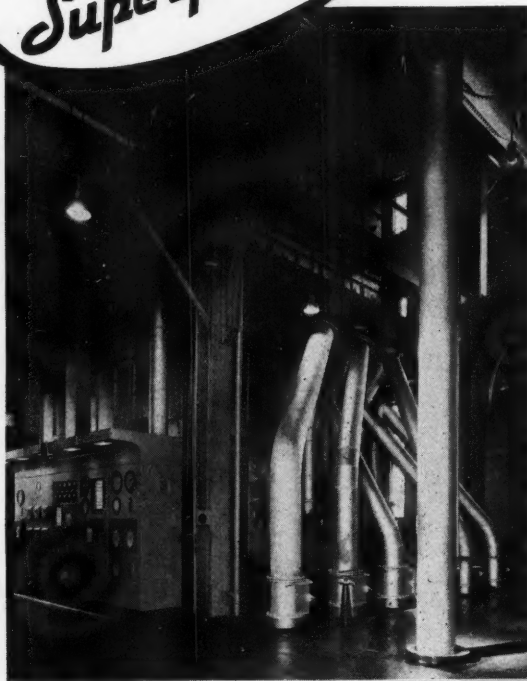
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*Central Station
Boilers for
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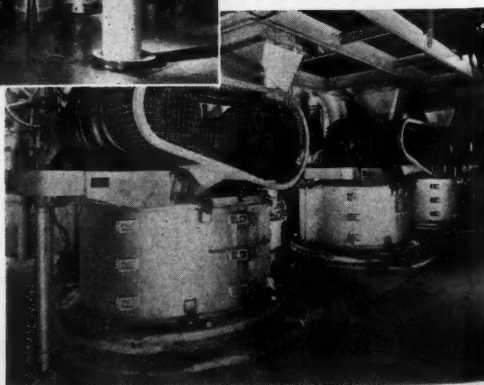
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in



Control panel and burner pipes of one of the B&W High-Head Boilers at Millers Ford Station, Dayton Power & Light Company.

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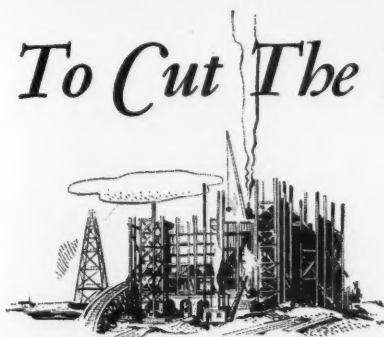
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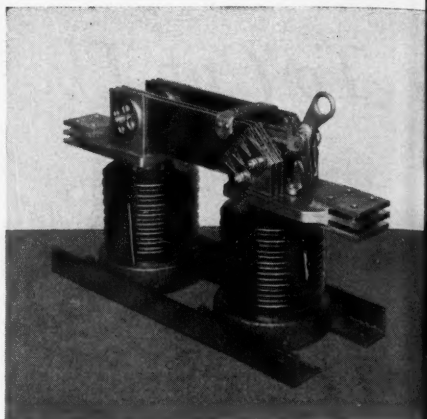
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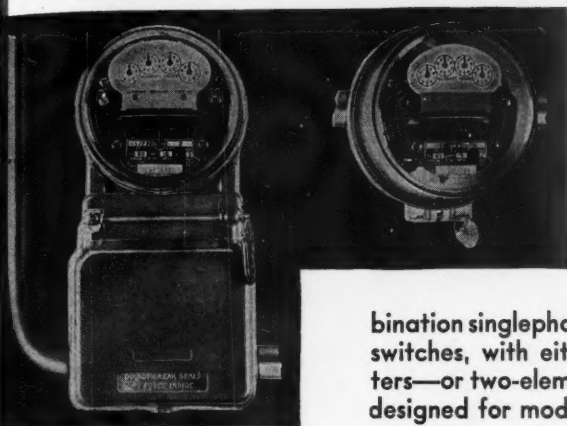
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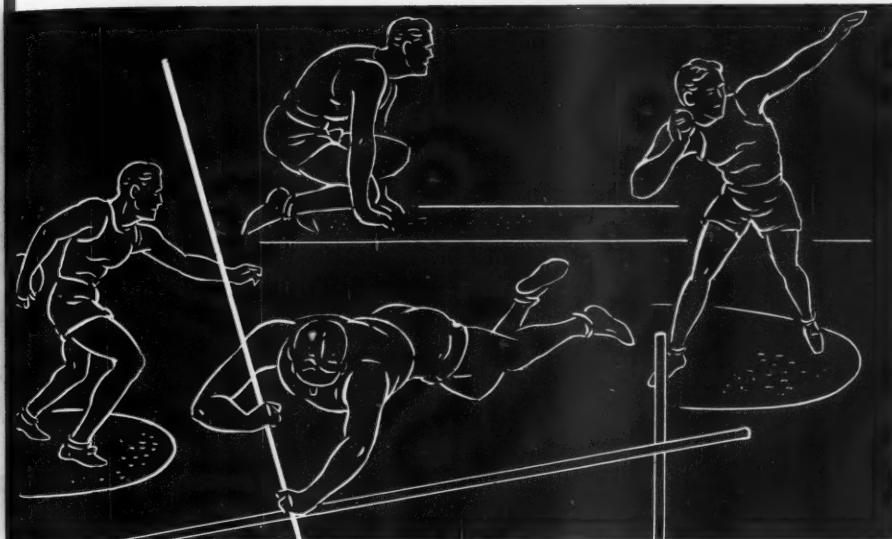
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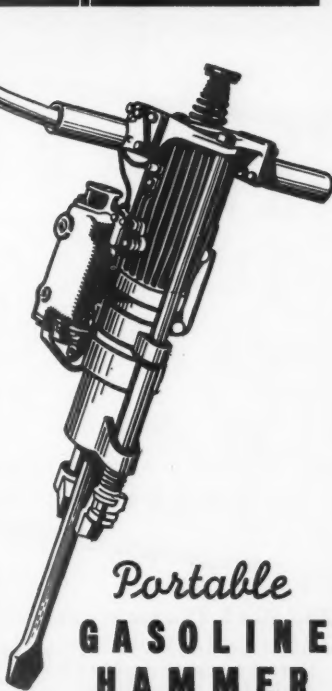


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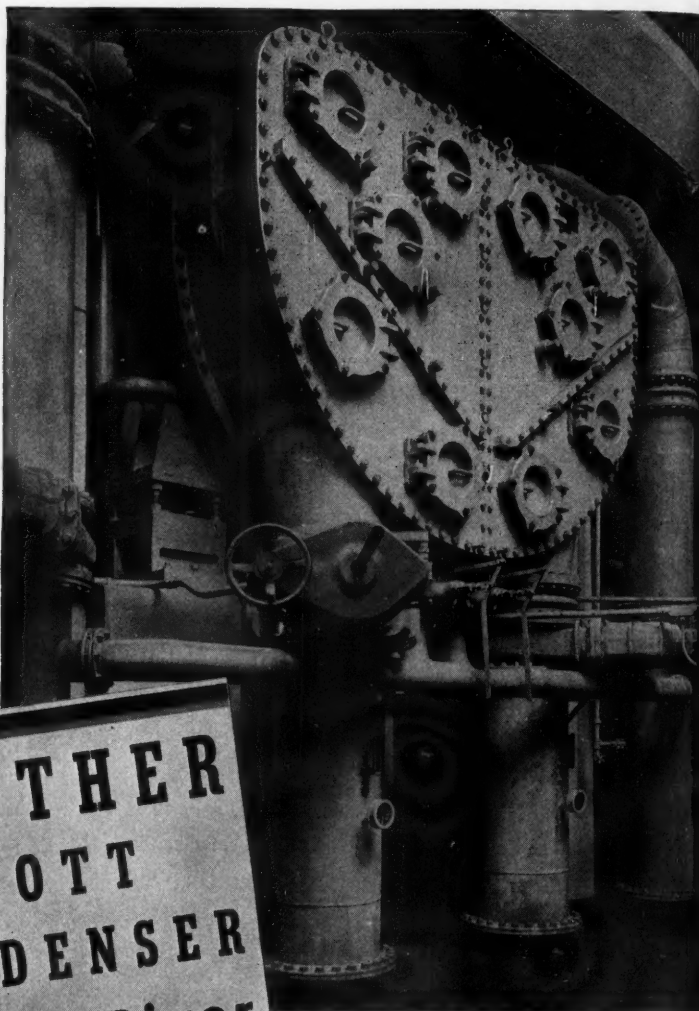
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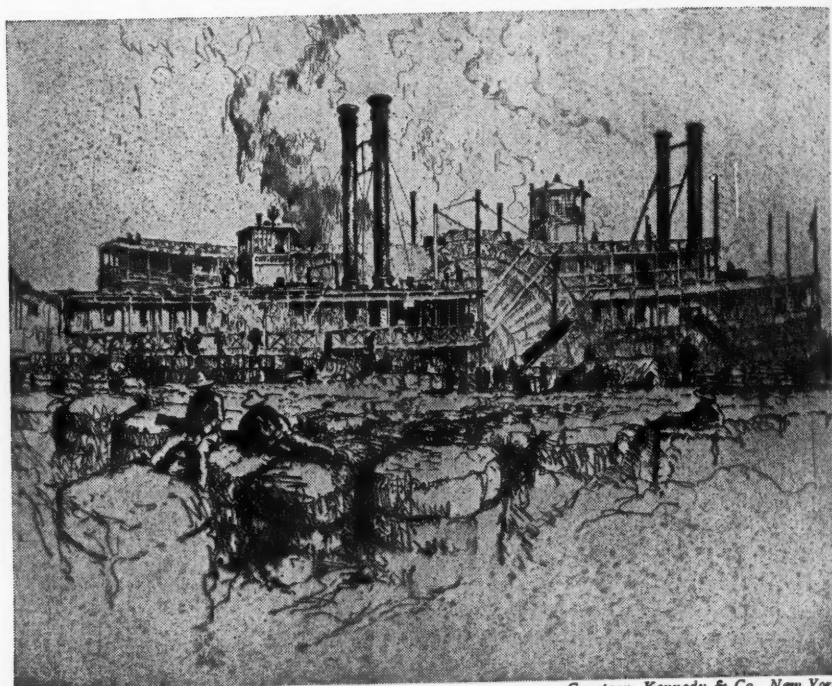
Utilities Almanack



A P R I L



13	T ^h	† Pacific Northwest Regional Planning Commission will hold annual conference, Seattle, Wash., April 27-29, 1939.
14	F	† Maryland Utilities Association holds spring meeting, Baltimore, Md., 1939. † American Water Works Asso., Mont. Sec., convenes, Great Falls, Mont., 1939.
15	S ^a	† American Society of Civil Engineers, Texas Section, will convene for semiannual meeting, Corpus Christi, Tex., April 28, 29, 1939.
16	S	† Chamber of Commerce of the United States will hold 27th annual meeting, Washington, D. C., May 1-4, 1939.
17	M	† American Institute of Electrical Engineers starts Southwest District meeting, Houston, Tex., 1939.
18	T ^u	† Iowa Independent Telephone Association convenes for session, Des Moines, Iowa, 1939.
19	W	† Pennsylvania Gas Association will hold 31st annual convention, Skytop, Pa., May 2-4, 1939. 
20	T ^h	† American Gas Association opens accounting conference, White Sulphur Springs, W. Va., 1939.
21	F	† Indiana Gas Association will convene for annual conference, Fort Wayne, Ind., May 8, 9, 1939.
22	S ^a	† British Commercial Gas Association starts annual convention, Brighton, England, 1939.
23	S	† American Gas Association, Natural Gas Section, will hold annual meeting, Tulsa, Okla., May 8-11, 1939.
24	M	† Indiana Telephone Association will hold convention, Indianapolis, Ind., May 10, 11, 1939.
25	T ^u	† Ohio Independent Telephone Association starts meeting, Columbus, Ohio, 1939.
26	W	† Electrochemical Society begins spring convention, Columbus, Ohio, 1939. 



From an etching by Otto Kuhler

Courtesy, Kennedy & Co., New York

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Public Utilities

FORTNIGHTLY

VOL. XXIII; No. 8



APRIL 13, 1939

Bonneville Rates and Market

Problem of finding an outlet for the kilowatts of the Oregon development immeasurably complicated, says the author, by huge Federal power projects within a 300-mile radius of Bonneville—Possibility of long-distance transmission to absorb surplus power.

By ERNEST R. ABRAMS

"THE time will come when power generated in those mountains will light the skyscrapers of New York city and move the 'L' trains in Chicago." Such was the prophecy last fall of the late Bonneville administrator, J. D. Ross. And the mountains to which he referred were the Cascades, that snow-capped range which separates the more populous areas of western Oregon and Washington from their thinly settled regions beyond.

Those of you who read that prophecy probably dismissed it as no more deserving of serious considera-

tion than the prediction that all of our energy will some day be derived from the sun. Certainly, you felt, it was wholly improbable within your lifetime.

YET, that "time" when electric power from the Pacific Northwest is to be carried east to light distant cities has recently been advanced to the comparatively near future, largely because our Federal power policy has permitted the creation of huge power projects and enormous oversupplies of electricity in this thinly populated section of the country.

PUBLIC UTILITIES FORTNIGHTLY

ONE of these projects, the Bonneville navigation and power development which the Federal government is building on the Columbia river, about 40 miles east of Portland, is now in operation. Ocean-going vessels have passed through its locks, salmon on their way to spawning beds at the headwaters of the stream have climbed its fishways, and electric power from its generators is already lighting the homes and turning the wheels of industry in near-by communities. But Bonneville is by no means completed. Although more than \$53,000,000 has been spent on its dam and reservoir, its locks and fishways, its power house and generating equipment, at least \$21,000,000 more will be needed before all of its power-producing machinery has been installed.

This total of some \$74,000,000 is, moreover, just the cost of the structures and apparatus at the site of the dam alone, and does not include any of the costs of transmission lines necessary to deliver the project's electricity to distant users. For, although the Public Works Administration allocated \$10,750,000 last July for the construction of four transmission lines to haul Bonneville's power to market, another \$32,000,000 will probably be needed to build other power delivery systems. Altogether, close to \$120,000,000 will be invested in the project before its full power-producing capacity has been reached, and before the necessary systems have been constructed to deliver its power to the communities, the farms, and the industries of the region.

And since the deep-water pool created above the Bonneville dam leads to no important traffic or terminal centers, and as the development of any sizable

volume of navigation in the river above the dam for many years is doubtful, navigation activities cannot be expected to contribute any appreciable amount of revenues to help defray current operating costs, let alone to return any part of the invested capital to the taxpayers of the nation from whom it was borrowed. Therefore, unless Bonneville's electricity can be sold in sufficient volume and at prices sufficiently high to cover all of its operating costs, including interest on the borrowed funds invested in its facilities, the taxpayers of the country will be forced to make up its annual losses.

IN its passage through the Cascade range, the Columbia river, third in size in the United States only to the Mississippi and the Missouri rivers, has carved a gorge between towering rock walls which has rendered it highly susceptible to the development of hydroelectric power. Particularly so since the average annual flow of the stream at this point is approximately ten times that of the Colorado river at Boulder dam. And the possibility of harnessing the river in this gorge for the creation of an abundant supply of cheap electric power to serve a region, rich in most natural resources but void of industrial fuel, has long fired the imaginations of the business interests of the contiguous areas.

But not because any lack of cheap electricity has existed in Oregon and Washington during past years. Actually, the combined generating capacities of their established utilities have always been greatly in excess of the maximum demands of their power consumers, while their power rates have ever been among the lowest of the

BONNEVILLE RATES AND MARKET

country, and well under the national average. Furthermore, both states contained innumerable power sites on smaller streams of dependable flow where ample power could be developed at much lower capital outlay than on the mighty Columbia. What these interests were really seeking was a power development which could produce such cheap electricity that the large-employment industries of the Middle West and the East could be attracted to the region.

The actual harnessing of the Columbia river at Bonneville resulted more from political expediency than from economic demand. For generations, the dream of eastern Washington had been the diversion of the waters of the Columbia to the 1,200,000 acres of irrigable land in its "Inland Empire," and innumerable sets of plans had been prepared for its accomplishment. Only the necessary money was lacking. And so, when Franklin D. Roosevelt listed the Columbia river basin as the scene of one of the four great government power developments in the course of a campaign speech in September of 1932, the boys in eastern Washington were ready for him. Quickly revising their irrigation plans to include a generous helping of power development, they carried their scheme to the Capitol as soon as Mr. Roosevelt had been in-

augurated; and, in that first wild scramble in the summer of 1933 to find projects for putting the unemployed to work, they received an allocation of \$63,000,000 for the construction of a dam across the Columbia at Grand Coulee.

BUT Oregonians had likewise heard that Portland speech, and they considered themselves as fully entitled to the benefits of a free-spending Federal policy as those folks in eastern Washington. Besides, they had long cherished that dream of harnessing the Columbia for power development in its Cascade gorge, so they, too, began putting pressure on the administration. And, in the words of an official of the Portland Chamber of Commerce, "Our delegation at Washington sold this project to the President . . ." At any rate, PWA not only authorized the construction of the Bonneville project but allocated \$20,250,000 for that purpose, only a few weeks after Grand Coulee had been assured of its first hand-out.

The actual construction of Bonneville's dam, with its locks, fishways, and power plant, was assigned to the Army Engineers who had reported in 1932 on the feasibility of all Columbia river projects. "Construction of dams on Columbia river," stated that report,



S"*SOME twenty years ago, the Ontario Hydro Commission started with rates comparable to those in effect at Bonneville but experience soon demonstrated that these rates had to be practically doubled. Where the wholesale rate at Toronto in 1918 was \$18.91 per kilowatt year, it is now \$34.80; and where power sold at the Canadian side of Niagara Falls at only \$13.20 per kilowatt year in 1913, it now costs \$25.33."*

PUBLIC UTILITIES FORTNIGHTLY

"will be controlled primarily by consideration of power development. Navigation, irrigation, and flood control will receive benefits from the reservoirs formed by the dams and from the developed power but, in general, the benefits may be regarded as collateral or incidental." In other words, the Army Engineers in 1932 considered all of the dams which might be built on the Columbia river to be primarily power dams. And the Army Engineers, who should know how they spent money in the construction of the Bonneville project, still considered Bonneville's dam a power dam in 1937, when the project was nearing completion.

IN March of that year, the Chief of Engineers advised the House Rivers and Harbors Committee that the total cost of Bonneville's navigation facilities would be \$24,654,300, and the cost of its power facilities, on the basis of the two generating units then being installed, would be \$30,112,400. When, however, the ultimate installation of ten generating units was completed, the cost of the power facilities was set at \$50,579,000. Thus, since the investment in navigation facilities would remain stationary, the Army Engineers determined the investment in the project's power facilities would run from 55 per cent of the first cost to 67 per cent of the final cost.

But if that division of the costs of the project between navigation and power development had been officially accepted, it would have necessitated substantially higher rates for Bonneville's electricity than were considered politically wise, since the PWA authorization and allocations had been made with the understanding that the

full investment of public funds in its power facilities would be returned to the Federal government during a period of fifty years. And it therefore became necessary to disregard the statement of expenditures of the Army Engineers, and so to allocate the costs of the project that the admitted power investment would permit of the desired rates—to fit the investment to the rates, rather than to base the rates on the investment.

Apparently, the most plausible device for obtaining the desired allocations was through a restatement of the purposes for which the project was constructed, and, accordingly, less than two months after the Chief of Engineers had presented his data, the Secretary of War wrote the chairman of the Senate Committee on Commerce that "the primary purpose of the Bonneville project is for navigation . . ." Thus, through official legerdemain, Bonneville was converted from a power project with incidental navigation benefits into a navigation project with incidental power development. And the Federal Power Commission, on the basis of this restatement of purpose, announced in February of 1938 that only 22 per cent of Bonneville's first cost had been allocated to power investment, and that only 57 per cent of its ultimate cost was to be so allocated. Having thus sliced \$18,430,000 from the initial power expenditures, and \$8,398,000 from the total power expenditures, as listed by the Army Engineers, the way was paved for the "proper" power rates.

THIS matter of rates for Bonneville's power had been a controversial issue ever since the construction

Kilowatt-year Device

"... all power produced at Bonneville is being sold by the kilowatt year, a radical departure from any basis of electric rates in vogue in the United States, although the device has been used with some success in Canada. Under this arrangement, a thousand watts of electricity is placed at the disposal of the buyer, day and night for 365 days or 8,760 hours each year, to be used as freely and during as many hours of the year as his scheme of operation will permit."



of the dam became assured. The business interests of Portland and other near-by communities had advocated a low power rate for industries to be located near the dam, with a charge to more distant points of use based on transmission distance. The outlying communities, however, were insistent on a "postage stamp" rate which would insure their ability to buy wholesale power as cheaply as the more favorably located communities and industries.

Sound business judgment would have dictated the low power charge for industries at the dam, since it has been the experience of the electric power industry that where large blocks of power have been developed, far in excess of the near-term demands of the market, its logical outlet was to industries dependent by their techniques upon the heavy use of cheap electric energy. And Colonel John P. Hogan, who acted as consulting engineer on the Bonneville project, largely confirmed this concept in March of 1934 when he told the Pacific Northwest Planning Conference: "The main prospect for Bonneville power is industrial growth. We should proceed vigorously with efforts to stimulate industrial growth.

We must attract private capital for industrial development." Nevertheless, despite the assurance of the Oregon State Planning Board that "a variable rate schedule based on actual costs of delivering energy according to transmission distance would retain the relative economic advantages of each area," the folks in the distant communities, and down by the forks of the creek, sensed a possible advantage in "postage stamp" charges, and it was considered politically unwise to oppose them. And so the schedule of Bonneville rates approved by the Federal Power Commission in June of 1938 was largely a concession to the demands of the blanket-rate advocates.

UNDER this schedule, all power produced at Bonneville is being sold by the kilowatt year, a radical departure from any basis of electric rates in vogue in the United States, although the device has been used with some success in Canada. Under this arrangement, a thousand watts of electricity is placed at the disposal of the buyer, day and night for 365 days or 8,760 hours each year, to be used as freely and during as many hours of the year as his

PUBLIC UTILITIES FORTNIGHTLY

scheme of operation will permit. In its effect, the kilowatt-year device closely resembles the well-known American plan of hotel operation under which the guest pays for a room and three daily meals, and if he misses any meals, that's just his bad luck.

The actual prices charged for Bonneville's power fall into two distinct groups; one set of prices to wholesale customers who can accept delivery of power within a radius of 15 miles of the dam, and the other set to those customers to whom power must be transmitted beyond that distance. Prime power, or power whose delivery can be guaranteed during every hour of the year, is sold at \$14.50 per kilowatt year near the dam, or at \$17.50 when power must be hauled more than 15 miles; and secondary power, or power which can be delivered only during certain seasons of the year, costs \$9.50 per kilowatt year at the dam, or \$11.50 at a distance.

Some twenty-five years ago, the Ontario Hydro Commission started with rates comparable to those in effect at Bonneville but experience soon demonstrated that these rates had to be practically doubled. Where the wholesale rate at Toronto in 1918 was \$18.91 per kilowatt year, it is now \$34.80; and where power sold at the Canadian side of Niagara Falls at only \$13.20 per kilowatt year in 1913, it now costs \$25.33. Furthermore, the Ontario Commission found it necessary to consider transmission distances in determining its rates to distant communities. Power from Bonneville costs \$17.50 per kilowatt year at Portland, only 40 miles away, and it costs the same at Medford, 292 miles from the dam. Power from Niagara Falls costs \$32.67 at Hamil-

ton, Ontario, 53 miles from the Falls, but it costs \$40.67 at Windsor, 238 miles away. And the cost of power at Windsor, Ontario, is approximately two and one-half times the cost of Bonneville's power at Medford, Oregon.

YET, despite these low rates, it is difficult to see how Bonneville's power can find an unsupplied market, for the combined electric generating capacity of Oregon and Washington at the close of 1937 was a little over 1,381,300 kilowatts, while the highest coincident demand ever made on that capacity by the homes and farms, the business houses and industries, of the region was only 865,000 kilowatts. Furthermore, this demand for electricity during the past seventeen years has expanded at an average rate of but 5 per cent each year, which is equivalent to the doubling of demand once in each fifteen and one-half years. And Bonneville, when completed, will increase the existing generating capacity of the two states by more than one-third, or by 504,000 kilowatts.

Between 1920 and 1937, the population of the two states increased at an average rate of slightly under one and one-half per cent each year, which led the Oregon State Planning Board to observe in late 1936: "More than anything else, this region needs increased population to consume the products of its resources and to provide a market for locally manufactured commodities." In addition, only 105,780 of the 735,000 families in the two states at the end of 1937 were not using electricity in their homes, and 39,600 of these families lived in communities where electric service was available to

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them. And although many of the 66,180 farm families, now without electric service and scattered to all corners of the two states, would undoubtedly use electricity if it were available to them, they could absorb only about 6 per cent of Bonneville's ultimate firm output, even if they used the average amount of electricity consumed in the homes of the region during 1937.

NOR would it appear that the present rate of residential use of electricity can be greatly increased, for the average household in the two states now uses 1,800 kilowatt hours during twelve months as compared with but 800 kilowatt hours for the nation as a whole. This high residential use in Oregon and Washington is due primarily to exceptionally low rates which permit householders to employ electricity for cooking and heating at relatively low cost. For where the average annual bill of these families in the Northwest is now \$35 for 1,800 kilowatt hours, the average residential customer in the entire nation pays the same amount for well under half that amount of electricity. And while a further reduction in rates would naturally stimulate the use of electricity in the homes of the two states, there is a limit to the amount of current the average family would use, even if it were free.

The logical outlet for Bonneville's power would have been to industries requiring large amounts of cheap power in their manufacturing processes, although industries of this type are few in number at best, and it would have been particularly difficult to attract many of them to the Pacific Northwest, far from major consuming centers, because of the long freight haul. But the task of bringing these industries to Bonneville has been made doubly difficult by the Federal Power Commission's restriction that not more than 20 per cent of Bonneville's power may be sold to industries near the dam, and then only to those concerns, "the waste products of whose plants or operations shall not be harmful to, or destructive of, the fish and other aquatic life of the Columbia; nor otherwise pollute the stream; nor detract from the scenic beauties of the Columbia river gorge." By this restriction, over half the industries which might have been prospects for the sale of Bonneville's power have been eliminated.

YET the Pacific Northwest has enjoyed exceptionally low power rates and almost unlimited power supplies for many years in comparison with large eastern manufacturing centers, and very few of these heavy consuming industries have established plants in the region. Adverse freight



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costs, lack of a dependable supply of cheap labor, and the absence of a local market sufficiently broad to absorb any sizable proportion of output, have been the discouraging factors, and have far outweighed the advantage of cheap electric power.

Of course, a part of Bonneville's power might be sold to the present customers of the existing utilities in the two states by any one of three methods. It might be sold to privately or publicly owned utilities for distribution to their customers, or the private utilities of the area might be purchased outright by the Bonneville project, or Bonneville might raid their service areas and actively compete with them for their customers.

The first method—the sale of power at wholesale to established utilities—has already been adopted. In late August, Bonneville began the delivery of a small amount of electricity to the three electric utilities operating in and around Portland for a trial period of four months. And while this experiment may result in the long-term purchase of power by these utilities, it would hardly seem that any large amount of power would be involved since their average cost of making electricity in 1937 was less than half the cost to them of Bonneville's power, when used during only half the hours of the year.

The sale of power to publicly owned utilities for distribution, however, seems more likely, since twenty-one public power districts in Washington and two in Oregon have already been organized for the distribution of electricity, with other districts in various stages of formation. In addition, numerous privately served communities

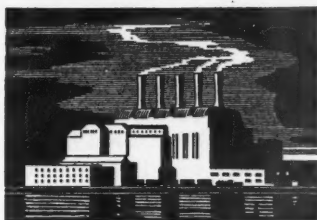
appealed to the late Administrator Ross to name the price at which their local distribution systems should be acquired for the municipal distribution of Bonneville power, and at least one community has decided to close its municipal plant and buy power from the Bonneville transmission lines.

SINCE the Bonneville Act specifically reserves one-half the project's power until 1941 for public bodies, with the further provision that preference shall always be shown communities and districts in the sale of power, it was to be expected that Mr. Ross, an avowed exponent of municipal ownership, would have looked with favor on the public acquisition of privately owned distribution systems, and would have assisted in the formation of public power districts. Accordingly, more and more communities and rural areas in Oregon and Washington may be expected to acquire the existing distribution systems of their private utilities for the peddling of Bonneville power.

The second method—the outright purchase of all or part of the private utilities in the region—might be attempted. Mr. Ross, in a consulting capacity, recommended such a course to the three public power districts comprising Nebraska's "Little TVA." And while the acquisition of these private companies would vastly expand the investment in the Bonneville project, and no new power demands would be thereby created, Bonneville would at least have control of the entire power market; and by closing down private utility plants, it could dispose of substantial amounts of its own power.

The third method—the direct pirat-

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Development of a National "Grid"

"... since most of our public power projects are located in economically thin regions where existing power supplies greatly exceed local demands, consumers must be attracted to these areas or the surplus power must be transmitted to large consuming centers, if that power is not to be wasted. And a national 'grid' that would likewise contribute to the national security might well fit into our present Federal power policy."

ing of the customers of the private utilities—would appear to be at least temporarily closed to Bonneville. Administrator Ross was one of the very few among the President's advisers who recognized the folly of such a course and warned against it. His long experience at Seattle had convinced him that duplication of systems and competition with existing facilities were unwise, and he had consistently advocated the purchase of any desired facilities at a fair price. Yet, it is conceivable that he might have been placed under ever-increasing pressure for the abandonment of his commendable stand, should difficulty be encountered in disposing of Bonneville's power.

BUT if any or all of these devices for selling Bonneville's power to the customers of the established utilities of the region should be adopted, the perplexing problem of absorbing the po-

tential output of the enormously expanded generating capacity of Oregon and Washington would remain unsolved. For their adoption would result in the mere substitution of public for private distribution without in any way increasing the power demands of the area.

And this problem of finding a market in the Pacific Northwest for Bonneville's power has been immeasurably complicated by the action of the Federal government in creating huge power developments at Grand Coulee in Washington and at Shasta dam in northern California, while it has assisted the city of Seattle in the development of its Skagit project, all within a radius of 300 miles of Bonneville. For the Skagit will have a generating capacity twice that of Bonneville, while Grand Coulee's firm power output alone will be greater than the combined 1937 output of all the utilities in

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Oregon, Washington, Montana, Idaho, Wyoming, Colorado, and Arizona.

As Dr. Henry E. Riggs, president of the American Society of Civil Engineers, has pointed out, either Bonneville or Grand Coulee "was capable of meeting all reasonable present or anticipated needs for additional power in Washington, Oregon, and Idaho, the three states having the cheapest power in the country and the greatest per capita consumption of power." Obviously, with the construction of all these projects and the development of a volume of power far in excess of the probable needs of the Pacific Northwest for generations, much of that power stands to be wasted unless it can be transmitted to other consuming areas.

ADMINISTRATOR ROSS might have had this choice of wasting or exporting power in mind when he presented a plan to the Engineers' Club of Seattle last July for connecting Bonneville, Grand Coulee, and other public power projects in the West and Northwest to the large population centers of the Middle West and East by means of three transcontinental transmission lines, with cross ties from Canada to Mexico. "The possibilities of such a long-distance network stagger the imagination," said Mr. Ross. "Columbia river power, or the power of Niagara and the St. Lawrence, could operate the power and lighting of New York or the homes of Florida or any part of America."

The necessity for this nation-wide network was attributed by Mr. Ross to the failure of the private power industry to foresee the tremendous needs of the future, and the resultant power

shortage soon to face the nation. Pointing out that the national demand for power has doubled each five and one-quarter years, on the average, between 1887 and 1937, he predicted that the United States would be using ten times as much electricity in 1954 as it did in 1937. And although this was Mr. Ross' guess, none of the recognized authorities of the country would appear to have agreed with him.

Since the first commercial electric plant in the country was not placed in operation until the fall of 1882, and the use of electricity in the nation was not sufficiently broad until after the turn of the century to provide a dependable basis for calculations, most qualified analysts base their predictions on the experience of the thirty-five years between 1902 and 1937, the only period in the history of the power industry for which reliable data are available. Yet the experience of even that period is not wholly trustworthy, since much of the increase in the demand for power between 1902 and 1927 resulted from the substitution by industry of electric power for its less flexible steam power. And, certainly, that mighty impulse to increased demand cannot occur again. Although all recognized authorities are not in full agreement, their estimates of the electric demands of the nation in 1954 fall between a low of half again and a high of three times the 1937 demand. And not ten times as Mr. Ross predicted.

WHILE this transcontinental power transmission scheme might at first glance appear a Jules Verne "brain storm," it is no more so than was Alexander Graham Bell's prediction of sixty years ago that the human voice

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would eventually be carried across the continent over wires, or Guglielmo Marconi's conviction that signals would some day be transmitted across the Atlantic over ether waves. For this scheme apparently falls well within the limits of technologic possibilities. Mr. Ross proposed the transmission, not of alternating current with its present limitation to distances of not more than 300 miles, but of direct current which may as easily be carried 3,000 miles through the use of very high voltages.

One stumbling block to the scheme, which Mr. Ross recognized, is that the apparatus necessary to change alternating current into direct current at the producing end of the line, and back into alternating current when the distant market is reached, has not been perfected. Yet, not only are some of our largest electrical equipment manufacturers hard on the job, but an actual experiment in direct current transmission is now being conducted with some promise of success by one of our major utility systems. Furthermore, every socket radio contains a tube whose function is to convert alternating into direct current to insure more even reception, and large rectifying tubes are now used in industry with an ability to handle 50,000 volts.

Let's assume that the plan Mr. Ross proposed will work, and that Bonne-

ville power can be delivered in New York city. Far more than a mere ability to transmit power from the Pacific Northwest to the Atlantic seaboard, however, is involved in this revolutionary scheme. As Mr. Ross told the people of Portland shortly after his appointment as Bonneville administrator, you can transmit power economically only to that point "where you meet other power at an equal or lower price." Apparently, then, even though power transmission between the two areas might be technologically possible, it could still be economically unjustified.

IF all the coal and oil and natural gas and running water in the United States were located only in the five states of New York, Tennessee, Nebraska, Arizona, and Oregon, for example, the production of the nation's power supply would naturally be limited to those areas, and its transmission to other regions without power-producing ability would then become necessary. Since, however, ample supplies of fuel and running water are widely distributed over the country, the shipment of power from one producing area to another, except in emergencies, savors of "carrying coal to Newcastle." For the actual cost of producing electricity last year—just the manufactured cost of raw power,



Q "... it is not the cost of producing power that determines its price to the individual consumers of the country, for raw power can be produced for a few mills per kilowatt hour in practically every section of the United States. Rather, it is the cost of hauling that power to the various communities, and of distributing it to the various users, that compounds its price."

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without any overhead or fixed charges—was the same in Miami as in New York city, in Dallas as in Detroit, in Atlanta as in Omaha.

Since competent engineers have not as yet determined the character of the 3,000-mile transmission line necessary to haul Bonneville's power to the Atlantic seaboard, and as the apparatus required to change alternating current into direct at Bonneville, and back into alternating current in the East, has not been perfected, no one can estimate the cost of such a power-delivery system today with any reasonable accuracy. And since the cost of the delivered power will consist of the price of power at Bonneville, plus the loss of electricity during transmission, the cost of transmission, and the fixed charges on the investment in the delivery system, no present estimate of the cost of Bonneville's power on the Atlantic seaboard can be more than an unsupported guess.

BUT far more important to eastern communities than a possible saving of a mill or two per kilowatt hour in their cost of electricity is the reliability of their electric service, the assurance that their source of electric supply will not be lost to them at critical moments. The private utility now serving most of New York city with electricity has, for years, been buying surplus power from an up-state utility having generating plants at many points, including Niagara Falls. And although all these up-state plants are interconnected with New York city through a statewide power network which, in effect, places Niagara Falls at New York city's doorstep, infrequent interruptions of power delivery between the two utilities have occurred.

What, then, might be expected of a power-delivery line of 3,000 miles, stretching over mountains, plains, and rivers?

After all, it is not the cost of producing power that determines its price to the individual consumers of the country, for raw power can be produced for a few mills per kilowatt hour in practically every section of the United States. Rather, it is the cost of hauling that power to the various communities, and of distributing it to the various users, that compounds its price. As Mr. Ross told the people of Oregon on the day of his appointment as administrator of the Bonneville project, wholesale power would be delivered to the communities of the region for "only a few mills per kilowatt hour, but the rate paid in the home will be about that many cents; that is, eight or ten times greater. It is the distribution that costs."

YET this suggestion of a nation-wide power network cannot be lightly discarded because of the economic obstacles to its success, since a large majority of our foremost engineers found little or no economic justification for most of the huge power projects with which the Federal government, directly or through PWA grants and loans, has spotted the country today. Nor can it be tossed aside as an unconstitutional activity of government, since none of us would have assumed a decade ago that doubtful or meager navigation and flood control benefits could serve as the constitutional pegs on which to hang large-scale public competition with private enterprise in the electric power and light field.

Actually, since most of our public

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power projects are located in economically thin regions where existing power supplies greatly exceed local demands, consumers must be attracted to these areas or the surplus power must be transmitted to large consuming centers, if that power is not to be wasted. And a national "grid" that would likewise contribute to the national security might well fit into our present Federal power policy.

"Bonneville, were it being built alone," said President Riggs of the American Society of Civil Engineers,

"appears to be a reasonable project with good prospects of being self-liquidating."

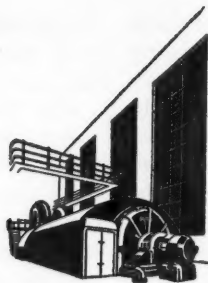
But when Grand Coulee and other power projects are developed in the same area at a public cost of some three-quarters of a billion dollars to create far more power than the region can absorb for generations, and it is then proposed to spend hundreds of millions of dollars more for a system to haul that surplus power to other well-supplied areas, the whole vast program becomes ludicrous.



Beware the Times, EEI and REA!

ACCORDING to a recent item in THE NEW YORKER, "candlelight is steadily gaining ground against electricity." The resurgence was not, as one might expect, in the hovels of the poor and desolate, but in the palatial quarters of the uppercrust. From this beginning the custom of having candles on the dinner table is reported to be "working down to the bungalow-apron set while at the top there's still a growing group of candle fanciers who, if it's at all practical, will use no other form of illumination." Reference was made to a recently deceased broker who used to light up his entire first floor with 600 candles. His account at the candlemakers "ran somewhere around seven thousand a year." A Park avenue (New York city) matron has no electric outlets in her apartment except in the kitchen. She gets along with a bare hundred candles situated in floor stands, candelabra, and wall brackets, which sets her back about three hundred a year at the candlemaker's.

A millionaire yachtsman recently set to sea with 10 dozen special candles at a mere \$125 a dozen. Other wealthy candle fanciers are listed by name, and don't think that candlemaking isn't keeping up with the times. Modern candles don't have to be trimmed and can withstand the heat of near-by electric lights—that is, if you HAVE to use electricity.



Agonies in Equity

"Ownership" of property on the instalment plan not always what thought to be

Municipalities which buy utilities on the revenue bond plan, and farmers who form coöperatives to render electric service, think they are the owners, say the author—but are they? Some questions worth considering.

By JONATHAN BROOKS

WHEN that I was a little tiny boy, with a heigh-ho, the wind and the rain, I learned among other things from my mother that it is a fine thing for a man to own his own home, with a roof under which to lay his head and a piece of ground upon which to raise a few things to feed his children. Pride of ownership, a desire for security, and some earning ability started me on the path wherein she set my feet.

So now I am a man, the wind and the rain do not bother me much except as they out-manuever my old roof and older casement windows (both of which will be repaired next time I re-finance!); and I have learned several things. Pride of ownership goeth before actual ownership. Security is expensive, and sometimes not very secure!

High are the interest rates there, but the amortization? Low. Also slow. Taxes on "my" property through the long years in which it was not mine at all would add up to a pretty sum if I cared to add them. Money I spent to keep the place livable, I spent with only that incentive; and no desire either to strengthen my equity or make the real ownership's value greater. My dollar-by-dollar equity building was slow; my efforts to make the equity worth more by seeing to it that the property grew in value were almost wholly futile.

The whole process has been more expensive, I think, than renting. Our children are almost grown and will be leaving us one day, and they probably would not live here on a bet after we are gone. Already, my wife thinks we may wish to seek a smaller, more con-

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venient place, and if we do, fair enough.

I've had a good, if tough, time. This is now our property. We have title, subject to a small mortgage. This title was hard come by, as we say; there were rough months, of illness, interrupted earnings, etc., but the whole process, in the ultimate, has been fun. Because it is now our property.

Now, I think I may have been a year finding out that a finger-nail grip on an equity lacks years and miles and dollars of being real ownership; my wife is more optimistic in retrospect—she thinks we both understood clearly at the outset that we were instalment buyers with no solid rights except the privileges of paying taxes and upkeep. In either case, we have now for years known clearly our position with respect to this bit of property. We might even go through the same process again! I don't know.

We have probably agonized as much in equity as the next family, or the average family, say. We know other folks who have sweat through equities, and are happy to have done so. Also, we know others who suffered through, and are bitter about it. Finally, we know people who walked out on equities in disgust; and people whose equities were snatched away from them by foreclosure. None of our friends in these two latter groups could be expected to think of the equity process with relish.

If the American public were as smart as I am, which it may be, and as tolerant as I am, which I am pretty sure it is not, we might as a whole have avoided the spectacular agony equities of the last decade, and the even more startling ones becoming apparent now

in this present generation. With motor cars, radios, furniture, and homes being sold on the equity or "use" ownership plan, it seems safe to say that no experience in this country is a more commonly known experience than mine in my home acquisition. But experience did not teach us very much in the last decade.

OUT of all the welter of headlines, politics, and preferred stock losses surrounding the subject of holding companies, in the public mind, one thing should stand forth as boldly as a red dollar sign in a timid banker's eye—equity! Maybe it does stand out now, but it did not, back in the twenties.

That is why so many dollars have been lost by so-called investors in so-called securities. I bought some preferred stocks myself (yes, on the equity, or instalment, plan!) but I knew at the time that I was buying a promise to pay from another mere equity owner who needed money at the moment for his operations. I did not think of myself as buying securities or ownership in anything.

When I needed my money back, I sold the preferred stock to the operating company that issued and sold it to me, with no loss. I was lucky, perhaps. On another occasion, I was very smart, indeed. Besought to purchase some preferred stock in a holding company, I refused, explaining that I could not afford to invest in shares of an equity *in an equity*; though my real reason was, I was broke.

THERE is no point here in elaborating on the losses suffered by people who bought preferred stocks in companies that owned only equities, nor

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on the profits made or mismade by equity manipulators. The losers, and the Federal Trade Commission, SEC, FPC, Congress, candidates, *et al.*, have elaborated plenty. Neither is there any point in mentioning here that a great deal of solid development was done by the use of equity financing in the public utility field. You can see the transmission systems and power plants; and you will find your electric rates about 40 per cent under what they were when the frenzied equity-financing began, just after the World War. More—

If you know any present-day utility operators, you may find them just as unhappy, or perhaps even more poignantly so, as the investors of the twenties, over the popularity of equity financing. That's not my point, either.

What I am slowly getting around to saying is this—that the bright particular phenomenon of the whole business was that the great investing class in the preferred stock market was predominantly people who were buying homes, motor cars, etc., on the equity plan! We should have known something about equities. We'd been buying things or the use of things, the most expensive way, for years, and we went right ahead. Experience did not teach us a thing. That was in the twenties.

And now, as the thirties shove along to the forties, just look at us!

PROBABLY ninety-five per cent of our politicians and officeholders on public payrolls (unless I err on the side of conservatism) are equity buyers, and have always been equity buyers. They have sweat through the home-purchasing process, as I did; or given it up in disgust, or seen their goal snatched away from them by foreclosure. They have bought automobiles the same way, and furniture, no end. They should by this time know the expensiveness of the process, and its inefficiency. The house or motor car is worn out, long before it is paid for, and who said any one of us set up proper depreciation?

We do not learn. They did not.

For here we are, embarking by cities, counties, and states (and oh, on the grand scale, federally!) on more and more equity financing! We are going to be our own financiers and our own investors; or, our own debtors and creditors, ourselves!

The agonies we endured buying our homes individually, we will now consolidate in a big way, and we can all excruciate together.

Our state has "legalized" the use of an instrument called "revenue bond" so



Q"THE same gentlemen who saw utilities rise in the twenties on equity financing, to tumble in the thirties, and spoke long and loudly of holding companies, watered stocks, pyramids, and whatnot else; and spoke so sympathetically of the investors in that equity financing; and spoke so successfully they now find themselves in public offices—those same gentlemen are employing the holding company plan AND the equity financing scheme both to the limit for rural electrification!"

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that we may coöperate in public equity financing. As nearly as I can determine, a revenue bond is blood brother to a preferred stock; but it has a better name, I think. Everybody knows revenue is a fine thing, and the word bond implies more solidity than does the word stock. (In retrospect, the word preferred was not so hot—preferred by whom? Preferred over what?)

So, a city decides to tolerate intolerable water supply service at intolerably high rates, no longer. It can buy the water company without a general mortgage bond—no debt, no tax levy to pay it off—buy it like rent, etc.,—in short, issue revenue bonds! The price, high of course, is \$1,125,000; and the city issues \$1,275,000 of revenue bonds to get the \$1,125,000 purchase cash. The revenue bond house provides the \$1,125,000 cash, takes the \$1,275,000 of revenue bonds, and sells them on a schedule to bring in (to the house, not the city) \$1,318,000.

City officials, all of them probably equity-experienced, seemed to think the deal good business. They have not yet paid anything on their equity, the first batch of revenue bonds not maturing for another year or two. They still have the intolerable water rates and the same water service. Their financing is on a 40-year basis. When (if, rather) they complete the deal, that city will have paid \$2,550,000, interest and principal, for its \$1,125,000 (liberal) waterworks!

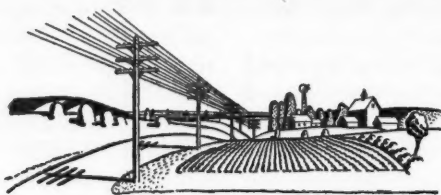
For expensive purchasing, that proportionately beats my home transaction as badly as FDR defeated Landon; as far as Babe Ruth ever knocked the lively ball!

HERE in my own home town, we had a splendid opportunity to buy the gas company for \$8,000,000 worth of revenue bonds, and did so. There is some litigation over a leased property that constitutes a considerable fraction of the total utility set-up, and our equity does not amount to very much as yet, if indeed anything. *But* most of our home purchasing here has been on the equity plan, as has also our automobile buying, and we naturally refer already to "our" gas utility! Our civic clubs and our newspapers harp on that point, in fact. It is ours; it belongs to us customers, you see?

We don't pay to ourselves the taxes the company used to pay, but otherwise we are in the same old equity boat, forgetting that when we had made one down payment on our houses we did not immediately come into full control of the properties. Curiously, though, we did have the sense to put some hard-headed sober business men in charge of "our" gas utility, and they have to take the heat for failing, it seems, to run "our" gas utility the way we want it run. They are the only ones who have to worry about making the \$8,000,000 (plus interest) of payments! Sometimes it almost appears as if they thought the \$8,000,000 bondholders had some rights!

WE do not learn. This good equity-home town with its still newly financed equity gas utility already talks of the "opportunity" to buy the water company for maybe \$25,000,000 of revenue bonds and \$25,000,000 of interest! Nothing down. No debt. No tax levy.

Now, I have served municipal plants as well as regulated utility companies,



Rural Electrification

"MUNICIPAL ownership is a good thing if you like it, if it works, if it can be set up economically. But rural electrification is a fine accomplishment with only one of those ifs—if it can indeed be accomplished. It will be worth, to the farmer and the land, possibly all it will cost. But we are going to have plenty of equity agonies before it is ever accomplished."

and I have no sharp criticism of municipal ownership *per se*. It is merely the modern method of arriving at it which I criticize. And, in the same way, I have been a booster for years of rural electrification; still plug for it, as a matter of fact. Municipal ownership is a good thing if you like it, if it works, if it can be set up economically.

But rural electrification is a fine accomplishment with only one of those ifs—if it can indeed be accomplished. It will be worth, to the farmer and the land, possibly all it will cost. But we are going to have plenty of equity agonies before it is ever accomplished.

The same gentlemen who saw utilities rise in the twenties on equity financing, to tumble in the thirties, and spoke long and loudly of holding companies, watered stocks, pyramids, and whatnot else; and spoke so sympathetically of the investors in that equity financing; and spoke so successfully they now find themselves in public offices—those same gentlemen are em-

ploying the holding company plan and the equity financing scheme both to the limit for rural electrification!

THE farmers want electrifying. They are going to be electrified until it hurts! The equity agonies are already under way. In our neighborhood, here is how it is done:

It takes little to convince the farmer that the average utility company is a thief and a robber, with its costs and its rates. What it takes, the demagogues have. So the farmers form a coöperative, a rural electrification membership corporation in, we'll say, Umph county. They pay \$5 each as they join, and \$10 each, later, when the program gets under way. These membership fees provide funds for organization, etc.

Umph county REMC obtains a certificate from the state REMC. Together they approach REA, in Washington, if REA has not already been approaching them, for a loan. REA

AGONIES IN EQUITY

makes a loan to build lines so many miles long to serve so many customers; REA takes a mortgage on the system built, and hocks it with a note, with RFC, to get the money. RFC holds the securities, and gets the money from the U. S. Treasury Department. The money goes down the stairs up which the paper came, and the job is done.

Service is begun, and talk of cheap rates, etc., has died out. Service is the thing. The farmers are delighted. They "own" an electric distribution system and get electric lights, etc., from themselves. Actually they do not have a dime of equity! Actually, too, they cannot exert any influence as owners over the mortgaged property. They are in the same boat, with respect to the system, that I paddled when I was "owning" my home at first. With only this difference—I had to pay the taxes on my property; they may be able, politically, to avoid their system taxes. To date, to their credit be it said, they have not undertaken to do so.

BUT it is expensive equity buying these farmers are doing. Umph county, owing the REA-RFC-U. S. Treasury more than half a million dollars, is now in its third year. It made out, somehow, the first year, because interest and principal payments are waived by contract, to be spread over the second nineteen years of a 20-year term. Umph county REMC now finds its expense per customer (member) per month is \$4.01. Here is a little table showing the spread of that \$4.01:

Electric power	15.5%
Operating expenses	16.4%
Depreciation	20.2%
Interest requirement	21.2%
Amortization	26.7%
Total expense	100.0%

Thus, it will be seen at a glance, buying without money, no payment down, equity procedure, is expensive buying. In the case of Umph county, an actual example, it is prohibitively high. For Umph's average income per customer per month is only about \$2.80! To pay \$4.01, it has only about \$2.80; which may climb up to \$3 in another year.

Temporary loans can ease the situation along until the farmers learn how well and economically they can use more and more electric current. Meanwhile, equity agonies, or growing pains, already are beginning to hurt. They would be worse, were it not that the REA has the good sense to buy power (note low proportionate expense above) instead of building new generating plants with bigger loans. REA buys where it can do so on decent terms.

FARM co-öp members are miffed, here and there, when one of their own boys is displaced as manager of "their" electric business, by REA. They do not like it when their treasurer is thrown overboard. They wish they had some control over rates. They object to being told their monthly minimum bill *has* to be \$2.50 or maybe \$3 or \$3.50.

But they have the service, and they'll have to use it, or lose it.

And I'm all in favor of it! Somehow, some way, perhaps they can wangle through the expensive equity purchase, and acquire title before the poles and wires fall down.

At any rate, my home is still standing, after all these years, all those payments, that interest, and those taxes. It may not have been good business for me, but I've got it now; and I never

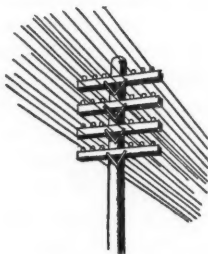
PUBLIC UTILITIES FORTNIGHTLY

worried whether it was good business for the people who financed. I suspect it may not have been such a profitable arrangement to them, for I remember I had to shop around to beat the band sometimes to find financing to keep my project going.

WE do not learn. There is the sad irony of the whole situation in public works and utilities as we head for the forties. After all our personal equity sufferings, our participation in or witnessing of utility tribulations in the same boat, *and* after hearing both

bankers and politicians discourse on the evils of the modern system—after all that, we turn right in and, by our duly constituted officials, go hellbent for more instalment-buying deferred-payment equity nursing than the world has ever seen before!

Poor folks, of course, have poor ways; and/or vice versa! Maybe it will be the beginnings of improvement if we *know* we have poor ways. Our bad lendings to ourselves and our expensive borrowings from ourselves may slow down when we begin to admit *both* are folly.



Telegrams by Telescript

TELEGRAPH history was written in New York city on January 30, 1939, with a demonstration of the world's first automatic telegraph, which transmits messages in facsimile and is expected to open a new era in written communication. The machine, developed by the Western Union Telegraph Company, was put to use for the first time in the Essex House, a local hotel.

The first message was a birthday greeting to President Roosevelt from Oscar Wintrab, managing director of the Essex House, sent in the presence of officers of the telegraph company and hotel officials. It said:

"Upon the world's first automatic telegraph installed by Western Union in this hotel and demonstrated for the press, I send you the first message. My warmest wishes upon your birthday and with it my admiration for the humane work you are doing in behalf of the Georgia Warm Springs Foundation."

Other messages were sent to Mayor La Guardia, General Hugh S. Johnson, and Alexander Simon, general manager of Western Union.



The Meaning of Federal Aid

The money which the government "gives" in grants, says the author, it merely takes from the people, poor as well as rich, in all parts of the country.

By ALBERT W. ATWOOD

IT is a very natural human tendency to busy ourselves with the immediate rather than with the distant question, even though the latter may be the more important of the two. We are so engaged in looking at the trees that we rarely see the woods.

This is certainly the case as regards the government's policy toward the utilities. When it pours nearly half a billion dollars into the TVA, or through the PWA makes grants and loans to 375 cities and towns for municipally owned power plants, we naturally and properly ask what this means to the utilities and their investors. Are such activities fair to private industry and of real social benefit? Over such questions the battle rages back and forth, almost filling the sky with the smoky and acrid clouds of bitter contention.

No one denies that the immediate questions are pressing and of great economic moment. But there is a broader issue to be considered. For the government's various ventures into the utility field are only part of a larger policy, namely, that of Federal grants, loans,

and aid in general. After all, the philosophy back of a PWA power grant is not very different from that of a WPA "project."

We need to reexamine the basic assumptions and implications involved in what is roughly described as Federal aid. What does it really mean? On this point singularly little has been said or written. The whole policy is taken far too readily for granted by its proponents and criticized on far too narrow grounds by its opponents.

AT the very start it must be perfectly apparent to anyone that when the WPA builds a sewer for the town of Four Corners, it enables the citizens of Four Corners to reduce their own taxes at the expense of the taxpayers of the nation as a whole.

Or if the PWA makes a grant to Four Corners for a power plant, this proves nothing as to the economy of the power project; all that is proven is that costs are reduced to the local people and increased to the nation as a whole. In other words, it is demonstrated that

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part of the public may enjoy an essential service at less than cost if the rest of the public foots the bill.

But just why should the Federal government subsidize a power plant in Four Corners or give a children's wading pool for its park, or a new sewer or school or bridge? To this question we get several different answers, the first being that construction of all these public works makes for employment.

But this is a poor sort of answer because unemployment is not necessarily worst in the community that most needs a new wading pool or even a new bridge. Distress is where you find it—and not always where a new auditorium or power plant or highway would prove most useful.

But this is not the worst feature of our system of Federal grants. When the government has vast sums to "give" away for local improvements, the natural tendency is to make a show of distributing the money all over the country and not merely where it is most sorely needed.

EVEN if this were not the inevitable tendency of the Federal authorities, it would practically be forced upon them by the persistent, everlasting importunities of governors and mayors. We all like to get something for nothing, and no state or city, no matter how rich, is going to plead anything but extreme poverty as long as it can get its local improvements attended to at Federal cost.

"It literally forces extravagances on every governor, mayor, or congressman," writes General Hugh Johnson, "and brings each one, hat in hand, to Administrator Ickes, Hopkins, or Wallace."

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Or, as T. Jefferson Coolidge, former Under-Secretary of the Treasury in the present administration, has said: "The success of honest and independent officials is made largely dependent upon their ability as beggars at the doors of Federal bureaucrats."

No politician is going to raise taxes upon the people in his own community, no matter how well able they are to pay or how much the money is needed, as long as he can wangle it out of the distant Federal treasury. In fact many candidates for public office now seek reelection on the ground of their ability to get money from Uncle Sam.

Nor is there any doubt whatever that with these vast sums of Federal money available many local improvements are being made not so much because of their necessity as because the money is there, waiting to be had. It is not wholly the imperative need for the local improvement which counts any longer; it is the fact that other communities are getting a lot of money from the common pot in Washington, and "if we don't hustle and 'get our share' we are going to be left."

OBVIOUSLY under such conditions there is no such brake upon extravagance as exists where all funds must be raised locally. Where such is the case there is a very close scrutiny from taxpayer and creditor groups. But when Uncle Sam puts up the money this watchfulness does not exist to anything like the same extent.

The Federal government is such a large unit that responsibility is diffused to an extreme degree. Of course the government must raise its funds through taxation, but from the point of view of any single community the bur-



Distress of Unemployment

"... this Federal policy of paying in whole or part for thousands upon thousands of local improvements is a wholly uneconomic way of relieving the distress which goes with unemployment. There must be some explanation, and there is. The Federal government, say the proponents of such a policy, should spread the benefits of public works and other similar improvements all over the country; in other words, it should equalize and distribute wealth."

den of that taxation is very impersonal, indirect, and almost invisible.

At any rate the money does not seem to cost the local community anything. Thus we have no effective check in the way of balancing satisfactions against costs. Of course every community says it needs a new bridge or auditorium or wading pool, but we no longer have any connection between the pain of raising the money and the satisfaction of spending it, and therefore no effective measure of balancing or measuring needs against costs.

Obviously, then, this Federal policy of paying in whole or part for thousands upon thousands of local improvements is a wholly uneconomic way of relieving the distress which goes with unemployment. There must be some other explanation, and there is. The Federal government, say the proponents of such a policy, should spread the benefits of public works and other similar improvements all over the

country; in other words, it should equalize and distribute wealth.

A VERY plausible argument can be made for this policy. There are nearly 200,000 different taxing units in the country and their ability to support various activities differs enormously. Everything depends upon the accident of natural resources, upon the geographical distribution of productive facilities and income, and upon the relative density or sparsity of population.

But why, it is argued, should the quality of a child's schooling or of a sewer or a park or a bridge depend upon the mere accident of a person's residence in one community or another? The kind of advantages which people have should not rest upon the chance distribution of wealth and income, and only the Federal government can equalize this distribution. Every individual has a right to the

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good things of life and it is the government's duty to see that he gets them.

But the trouble with this whole argument is that it proves too much. If the Federal Treasury is going to supply local communities, as it is now doing, with good schools, sewers, town halls, bridges, hospitals, and the like, regardless of the interest taken and the effort and self-sacrifice made by the citizens of those towns, what is going to become of the moral necessity to work out its own salvation under which the human race has always labored?

THE further difficulty is that this policy of equalizing wealth has no stopping point. It works into an ever wider and wider circle of vicious parasitism. If every town is to be given a good school or bridge or park why should the government stop there? Why shouldn't it go on and see that all citizens have equally good houses, jobs, and incomes?

Nor is this mere idle theory. We have plenty of evidence that the more the government hands out to people the more they want; there is just no stopping point to the Santa Claus theory. Through the Home Owners' Loan Corporation and the Farm Credit Administration the government has been almost unbelievably generous in refunding the mortgage indebtedness of urban home owners and farmers. Yet there are constant and angry demands from many quarters that still easier terms be provided. No matter how low a rate of interest the government sets, there are always powerful blocs of influence demanding even lower rates.

Beyond a shadow of doubt the present policy by which Federal agencies pass out money at will for thousands of

local benefits and improvements is full of pitfalls and dangers. On the other hand, the taxing and borrowing ability of the Federal government is so much greater than that of the states and localities that some rearrangement is needed by which the expenses of government at all three levels, local, state, and central, can be more equitably met than in the past.

UNFORTUNATELY the country has been unwilling or unable to think through the complicated questions involved. For some years now it has been perfectly obvious that one of two courses must be followed. One would be for the Federal government, much after the fashion of England and Germany, to collect all taxes, except perhaps local real estate taxes, and remit a portion, not according to the whim of a politically appointed "administrator," but according to carefully predetermined scientific formula.

The other course would be for the Federal government, the states, and the localities to agree among themselves on a division of tax revenues so that there shall be no duplication and so that each level of government shall have ample for its purposes, in so far as such a thing is possible.

But instead of following either course, instead of laboriously working out the formulas required, instead of frankly and deliberately making such readjustments in the financial relationships of the three levels of government which modern conditions require, we have with incredible folly taken the attitude that Uncle Sam has something to give away, and that it is very nice for him to do so.

"I am proud and happy at how much

THE MEANING OF FEDERAL AID

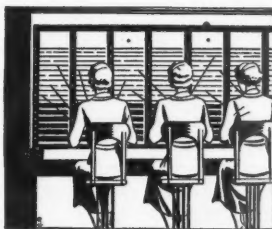
the Federal government has been able to help Kentucky and the other states," said President Roosevelt a few months ago in a speech in Kentucky.

But, of course, this just doesn't mean anything. The Federal government hasn't a cent to give away. In fact the very words we have been using in this article, grants, aid, subsidies, and help, are utterly misleading. The money which the government "gives" in grants and aid it merely takes from people, poor as well as rich, in all parts of the country. Indeed, it even takes 6 cents from every person who smokes a package of cigarettes.

THUS there is no question at all of generosity, or liberality, or even

of "aid" or "help" on the one side or of any so-called "right" to the money on the other. It is solely a question of finding the workable measures or formulas for raising and distributing revenues, and we have been wasting years of valuable time with our minds concentrated upon such false words as grants and aid.

YEARS ago Senator Glass recognized that "all this talk of Federal aid is folly. Never was such a misnomer written into the English language!" But we have preferred to follow a false slogan, which seemed to show an easy way out, rather than to do the hard mental work required to solve the problems themselves.



Telephone Breakdown in Dallas

FOR a few hours recently, 13,000 families in the Oak Cliff area of Dallas, Texas, knew what it was to be without telephone service. A Sunday night fire destroyed a 4,400-wire trunk line cable connection between the Dallas and Oak Cliff terminals, and for a while the Oak Cliff subscribers had to get along without telephone service. Two-way short wave radio service was used by the fire department during the emergency. THE TEXAS WEEKLY, commenting on the incident, ventured the surmise that Oak Cliff subscribers were perhaps made more appreciative of the value of telephone service, and added:

"That efficiency is not, of course, applied solely to the telephone industry. It reaches into every phase of American life. It ought not, perhaps, to be taken quite so much for granted."



Wire and Wireless Communication

THE long-awaited amendments to the wage-hour law to relieve small independent telephone companies were introduced in the House of Representatives by Chairman Mary T. Norton, Representative of New Jersey, in the form of a committee bill on March 29th. The bill immediately received the nickname of "white collar amendment" because its principal feature was the exemption of workers receiving salaries of \$200 a month or more to perform duties in the nature of executive functions.

But among the other adjustments of the bill was a provision to exempt from the application of Federal wage-hour standards all telephone operators employed on exchanges serving fewer than 350 subscribers.

The restricted size of the exemption was considerably less than the 1,000-subscriber maximum exemption proposed in the Herring-Harrington bills sponsored by the U. S. Independent Telephone Association. The 350-subscriber limit in the Norton bill was also smaller than Washington observers had been led to believe as a result of informal discussions between the House Labor Committee and officials of the Wage-Hour Administration. While it had not been expected that the committee bill would exempt exchanges as large as those having 1,000 subscribers, it was thought that a bill setting a limit at about 500 would be forthcoming. However, in view of the fact that many Representatives of Congress have become interested in the matter, it is

recognized that there is a good chance that the size of the telephone exchange exemption may be further liberalized before the Norton bill is finally enacted.

Senator Thomas, chairman of the Senate Education and Labor Committee, was expected to introduce a similar bill in the Senate. Chairmen of both the Senate and House committees planned to hold hearings early in April, giving rise to the hope that some form of such legislation would be enacted at the current session of Congress. Both the Norton and the Thomas bills would give power to Wage-Hour Administrator Andrews to decide upon the application of the law and to define technical and trade terms, and to make special provisions regarding industrial homework and "constant" wage plans.

* * * *

ON March 28th President Roosevelt accepted the resignation of Eugene O. Sykes as a member of the Federal Communications Commission, effective April 1st, and on the same day announced the appointment to fill the unexpired term of Commissioner Sykes. The new appointee is Frederick Ingate Thompson, newspaper publisher of Mobile, Ala. Commissioner Thompson was born in Aberdeen, Miss., on September 29, 1875, and after preliminary education in the public schools of that community began his journalistic career there as the editor of the *Aberdeen Weekly*. In 1909 he became chief owner and publisher of the *Mobile Daily Register* (morning) and

WIRE AND WIRELESS COMMUNICATION

subsequently acquired the *Mobile News Item* (evening), *Montgomery Journal*, and the *Birmingham Daily Age-Herald*.

He became active in the affairs of the Democratic party beginning with his service as the delegate to the national convention in 1912. In 1920 he was appointed commissioner of the U. S. Shipping Board by President Wilson and was reappointed by President Harding and President Coolidge, resigning from that post in November, 1925. In 1933 Commissioner Thompson was appointed a member of the Advisory Board of Public Works for the state of Alabama by President Roosevelt.

His appointment was understood to have the approval of both Senators from Alabama, Bankhead and Hill, and it was expected that the nomination would be speedily confirmed by the Senate. The term of former Commissioner Sykes would have expired July 1, 1941.

The naming of Commissioner Thompson took political observers entirely by surprise as he had not been included in any of the lists of likely appointees which had appeared in the Washington gossip columns through the month of March. The element of surprise was occasioned to some extent by the fact that President Roosevelt chose a well-known newspaper publisher, notwithstanding the views which have previously been expressed in some quarters that further activity of newspaper publishers in the acquisition and operation of radio broadcasting stations ought to be discouraged in the public interest. It will be recalled that Senator Wheeler of Montana, chairman of the Senate Interstate Commerce Committee, threatened to introduce a bill barring newspaper publishers from control of radio broadcasting stations.

By a curious coincidence, on the very same day Commissioner Thompson was named, the issue of newspaper *versus* radio broadcasting ownership was injected in a divided opinion of the Federal Communications Commission. The case involved ownership of Station WCAX at Burlington, Vt. The newspaper angle was present in a reverse operation in that the former owner, *Bur-*

lington Daily News, sought authority to sell its properties to a rival station owned and operated by independent radio interests. The transfer was approved. Chairman McNinch dissented on the grounds that the resulting reduction in competition was not in the public interest. Commissioner Paul Walker also dissented on the grounds that more adequate public hearings should have preceded the order.

* * * *

At a recent meeting of the System's Operation Committee of the Pennsylvania Electric Association in the city of Harrisburg, an interesting session was devoted to the problem of communications needs of noncommunications utilities. Chester Wallace, special representative of the Bell System, and several other Bell engineers were present and joined in the discussion.

It developed that a number of electric utilities have installed mobile radio facilities for emergency use on frequency allocations granted by the FCC. J. G. McKinley, of the West Penn Electric Company, stressed the point that the use by electric utilities of such wireless facilities was more for the purpose of insurance against emergency than for mere operating economies, as compared with other forms of communications services. Some systems reported a number of emergency calls per day with excellent results from the use of low-powered mobile transmitters.

Emergencies aided by such prompt communications service varied from sleeting to complete electric line outages. Location of interference and quick rehabilitation were among the benefits of mobile radio emergency service. In addition to open radio communication, electric utility men reported excellent results from the use of carrier line service as a means for maintaining operating communication. These carrier circuits were reported to be just as reliable as the electric lines with which they are associated. R. F. Davis, of the A. T. & T., explained some recent improvements in regular telephone equipment which power companies can apply to their own wire sys-

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tems. A lately developed alternating current telephone repeater received special notice.

The general discussion developed apparent sentiment among the assembled engineers that more could be expected in the way of applying telephone and radio communications facilities to the special communications needs of not only electric line operations but gas distribution facilities as well. Such catastrophes as the recent New England hurricane were generally viewed as indicating the need of developing reliable communication for all utility services under such emergency conditions.

* * * *

NEWSPAPER advertising was termed the most effective means of combating destructive features of new governmental regulation in the address of President Oscar Burton of Tyler, Texas, at the Baker Hotel in Dallas at the opening of the annual convention of the Texas Telephone Association on March 22nd.

This recommendation followed talks in which members declared that telephone companies in small towns will be driven into bankruptcy if they are forced to adhere strictly to regulations of the wage and hour bill as it now stands. Small telephone companies also are being hard hit by interference developed as a result of methods followed by the Rural Electrification Administration in constructing power lines, they said, and suffer additionally from heavy tax levies. Mr. Burton stated:

We need to take the public into our confidence. Nearly all groups have been forced to develop a definite public relations program. I know of no better way to present our troubles to the public than through our newspapers. Institutional advertising could be very helpful.

Telephone men were urged to present their problems to their representatives in an address by George B. Butler of Austin, secretary.

* * * *

THE *Wall Street Journal* recently published an article from Aurora, Neb., showing how public ownership may obstruct the use of home-owned

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utility service. The story concerned a telephone plant in Hamilton county that serves 1,500 farmers who own and operate the plant. The public ownership obstruction is an REA transmission system. The *Journal* stated:

Farmers in the county organized a public power district and obtained a \$400,000 loan from the Rural Electrification Administration for construction of a transmission and a distribution system. Government engineers routed 200 miles of transmission lines parallel to those of the telephone company, which raised the problem of telephonic disturbance because of inductive interference by the power lines. The farmers insisted that the REA pay for elimination of the interference, costing about \$27,000, but the REA refused and the contemplated project has reached an impasse.

There is another feature that farmers under such circumstances have lately had to consider. In the Aurora Case the telephone company was the property of the farmers themselves and the resulting adverse effect of rural electrification upon their investment became immediately apparent to them. In other cases where rural telephone service is being conducted by small private companies, the farmers have escaped, in the first instance at least, the direct burden of paying the cost for eliminating electric power line interference. In some instances the farmers have let their enthusiasm for rural electrification carry them to the point of threatening cancellation of telephone contracts unless telephone companies pay such eliminating costs.

Although the Rural Electrification Administration has been making recent efforts to clear up such local situations by negotiation, a final showdown may have to come in some cases whereby farmers will have to choose between telephone and electric service unless they are willing to pay a little more for one or the other.

* * * *

A HUMAN interest story comes from the small community of Echo, Ore., which reflects the popularity of the local telephone operator. Early in March it was announced that manual telephones in that area would be switched over to automatic dial. Immediately a civic organization known as the Boosters' Club

WIRE AND WIRELESS COMMUNICATION

took up the cause of the local operator and adopted unanimous protest resolutions.

Four reasons were given for retention of the manual operator:

(1) In emergencies demanding medical service, the operator usually knows where the doctor may be found. If he is out a dial phone would just give the caller the old "buzzbery."

(2) Rural users rely on the operator to inform callers when they are away, where they may be found, or when they will return.

(3) The town still likes its operator.

(4) Echo is a friendly, human sort of a place—and its residents do not like robots.

* * * *

FEDERAL Communications Commissioner Paul A. Walker on March 21st denied reports that he would resign and suggested that the commission draft a "strong report" on the \$1,500,000 investigation of the American Telephone and Telegraph Company. Mr. Walker, who last April recommended strict regulation of the telephone industry, reiterated belief in the necessity of regulatory legislation. In a formal statement, Mr. Walker said:

The report of my impending resignation is false. As for the rumor from a utility quarter that I am not receptive to reappointment because of criticism of my handling of the Bell Telephone investigation, that is utterly without foundation.

I hope to see a strong report from the commission on this investigation and the enactment of legislation by Congress for adequate regulation of the telephone industry.

* * * *

BOROUGH President James J. Lyons of the Bronx urged the abolition of Station WNYC in a letter sent on March 27th to the Board of Estimate. Mr. Lyons, who advocated selling the municipally owned station to private operators, charged that the Fusion administration was using it for "publicity" purposes and that financially the station was an "absolute waste and luxury."

Scoring the directors of the station for refusing to allot more than a half-hour

for the broadcasting of speeches at the Sunday morning breakfast of a police department group, he said:

Generally speaking, there seems to be no more need for a city-owned broadcasting station than there would be for a city-owned newspaper or other vehicles for disseminating news. Past, present, and future city administrations are bound to use such a broadcasting station for the advancement of the whims, policies, and politics of the dominating city administrations. I do not think that the present Fusion administration can be absolved entirely of yielding to such publicity temptations.

Mr. Lyons also pointed out that if the city sold the station a new source of revenue would be provided by allowing commercial stations to broadcast sessions of the city council.

* * * *

THE FCC recently announced that it had authorized the establishment of a permanent office of information. This resolution was adopted unanimously and provides for appointment of a director of information and special assistant to the chairman, with one assistant.

M. L. Ramsay, who was brought to the commission by Chairman Frank R. McNinch four months ago to make a survey and recommendations for handling the commission's information service, returned to his permanent post with the Rural Electrification Administration. His detail ended March 31st. The report Mr. Ramsay made on his study of the commission's information set-up was adopted by the commission. The new office is directly responsible to the commission, replacing the press section, a unit in the administrative branch, under the chairman.

The chairman was authorized to seek to exempt from civil service the appointments to the two principal positions.

* * * *

P. S. Telephone men and women throughout the United States will not want to miss the current motion picture, "The Story of Alexander Graham Bell," which had its world première at Constitution Hall in Washington, D. C., on March 29th. Dramatic critics acclaimed the epic portrayal with enthusiasm.



Financial News and Comment

By OWEN ELY

Failure of Foreign and Domestic Appeasement Programs

THE third war scare in six months has again depressed stock prices, to almost the same degree as in September and January, and at this writing the consequences of Mussolini's demands may prove further unsettling. Because of the rapid march of events it is perhaps futile to conjecture as to possibilities of a major European war, but many experts still hold the opinion that such a war is unlikely for this year at least. Due to Hitler's weak financial position and lack of essential war materials, such as crude oil, he may wish to consolidate recent territorial and trade gains, despite the possibility that such a breathing spell may afford France and England time to complete their war preparations.

It is also quite possible that the latter countries will permit further German encroachments in the East, so long as Hitler does not overrun western buffer nations, such as Switzerland, Belgium, and Holland. Reacquisition by Germany of the two small provinces lost to Denmark at Versailles, and of Danzig and the Polish corridor, would probably not furnish a *casus belli*, particularly as Poland is reluctant to join the anti-German bloc without definite territorial guaranties. Buffer states between Germany and Russia are, after all, unimportant from the Anglo-French viewpoint, except as future sources of men and munitions for Germany. The population of these countries can hardly be added immediately to Germany's effective armed forces, and local antagonism is a temporary offsetting factor.

The breakdown in the business "appeasement" program at Washington, due

to Mr. Roosevelt's failure to support the enthusiastic program of his lieutenants, has also doubtless had a depressing effect on business. Weekly business indices such as *Barron's* and *The New York Times'* have continued their downward trend since December, losing about one-quarter or more of the gains made during May-December. The Federal Reserve index, which advanced from about 77 to 104, dropped to an estimated 98 in February, probably about 96 for March. Bank debits, as reflected in the new Skinner index in *Time* magazine, make a particularly unfavorable showing, apparently forecasting a further dip in the production indices.

It appears likely, therefore, that 1939 will do well if it merely retains the gains won last fall. It seems improbable, in the writer's opinion, that the Federal Reserve index can advance much above the 105 level by summer, and the average for the year can hardly exceed that figure unless there is a marked change in the present atmosphere both at home and abroad. Barring a European war, however, the outlook for 1940, with the probable combined stimulus of a building boom and a presidential campaign, seems highly favorable, and, with a conservative administration of either party in power, 1941-42 might well set new high marks for the business indices.

Finders' Fees in Private Financing

THE SEC has recently been investigating the practice of private financing from the angle of "finders' fees," with some indication that this whole subject might be tied into the two related

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FINANCIAL NEWS AND COMMENT

issues of competitive bidding and "arm-length dealing." Testimony that the recent private offering of \$15,000,000 Connecticut Light and Power Company 3½ per cent 30-year bonds "went out the window" with a minimum of effort was placed on the record in the commission's hearing into the question of fees charged by two underwriting houses. The bonds were sold above par to yield 3 per cent.

The SEC is trying to determine whether the banking houses of Charles W. Scranton & Co. of New Haven and Putnam & Co. of Hartford were justified in charging a "finders' fee" of one-half of one per cent, or \$75,000, on the issue. The case goes back to November, when the power company refunded an issue of \$10,000,000 of 3½ per cent bonds which it had placed privately in 1935 with ten insurance companies. Scranton & Co. and Putnam & Co. were employed as

agents in the financing by Connecticut Light and Power, as in the earlier deal, in which their "finders' fee" had been one per cent. They had been bankers for the power concern since 1921.

Mr. A. W. Mellon, Jr., assistant treasurer of the Metropolitan Life Insurance Co., in testifying before the commission, stated that his principals had made up their minds to take up to \$10,000,000 of the bonds if they could get them. Their only real difficulty, he said, was in price. They were offered originally to the insurance companies to yield a little less than 3 per cent. When the figure was amended to a flat 3 per cent, Metropolitan Life took all that it could get.

Charles L. Campbell, president of Connecticut Light and Power, declared in earlier testimony that he was opposed to competitive bidding on securities, al-



REPRESENTATIVE UTILITY PREFERRED STOCKS

(Arranged in Order of Yield)

	Approx. Price	Approx. Yield	Call Price	1938 Earnings	No. Times Div. Earned
Pacific Tel. & Tel. (\$6)	150	4.0	N.C.	\$21.03	3.5
Cons. Gas of Baltimore (\$5)	113	4.4	110	26.24	5.2
United Gas Improvement (\$5)	113	4.4	110	33.75	6.7
Pacific Gas & Electric (\$1.50)	32	4.7	N.C.	4.40E	2.9
Public Service of N. J. (\$5)	108	4.7	N.C.	14.13	2.8
Consolidated Edison of N. Y. (\$5)	105	4.8	105	16.75E	3.3
Public Service of N. J. (\$6)	123	4.9	N.C.	14.13	2.3
So. California Edison (\$1.50)	30	5.0	28½	3.35E	2.2
American Gas & Electric (\$6)	114	5.3	110	34.11	5.7
American Light & Traction (\$1.50)	28	5.4	N.C.	8.50E	5.7
Bell Telephone of Penna. (\$6.50)	121	5.4	110	50.00E	7.7
North American (\$3)	55	5.5	55	26.35E	8.8
Pacific Lighting (\$6)	107	5.6	105	40.15	6.6
Niagara Hudson Power (\$5)	88	5.7	107½	19.00E	3.8
General Telephone (\$3) conv.	51	5.9	50	18.36	6.1
West Penn Electric (\$7)	106	6.6	115	11.65E	1.6
American Water Works & El. (\$6)	90	6.7	110	10.70E	1.7
Columbia Gas & Elec. (\$6)	88	6.8	105	10.70E	2.1
Federal Lt. & Traction (\$6)	88	6.8	110	31.00E	5.2
Georgia Power (\$6)	89	6.8	110	9.07	1.5
Philadelphia Company (\$3)	44	6.8	N.C.	10.00E	3.3
Engineers Pub. Serv. (\$5) conv.	71	7.1	110	9.01	1.8
National Power & Light (\$6)	81	7.4	110	31.25	5.2
American Superpower (\$6) first	76	7.9	110	3.48	.6
United Gas (\$7)* first	85	8.2	110	11.80E	1.7
United Corporation (\$3)	34	8.8	55	3.42	1.1
Electric Bond & Share (\$6)	65	9.3	110	6.30E	1.1

E—Estimated.

*—Dividend arrears amount to \$25.13.

PUBLIC UTILITIES FORTNIGHTLY

though he favored it on coal, copper, insulators, generators, etc.

1938 Load-building Programs

BASED upon reports from 129 utility companies with 14,039,626 domestic (residential and farm) customers, following are the results of 1938 load-building programs as compiled by the *Electrical World*:

Companies' merchandise sales volume dropped 32 per cent.

Dealers' merchandise sales volume in same territory dropped 8 per cent.

Merchandise sales per customer by utilities and dealers dropped 23 per cent.

Average usage went up about 6 per cent.

Average annual bill went up 2 per cent.

Utilities' sales and promotional expenses per customer went up 12 per cent.

Associate Editor Henry G. Dooley comments as follows:

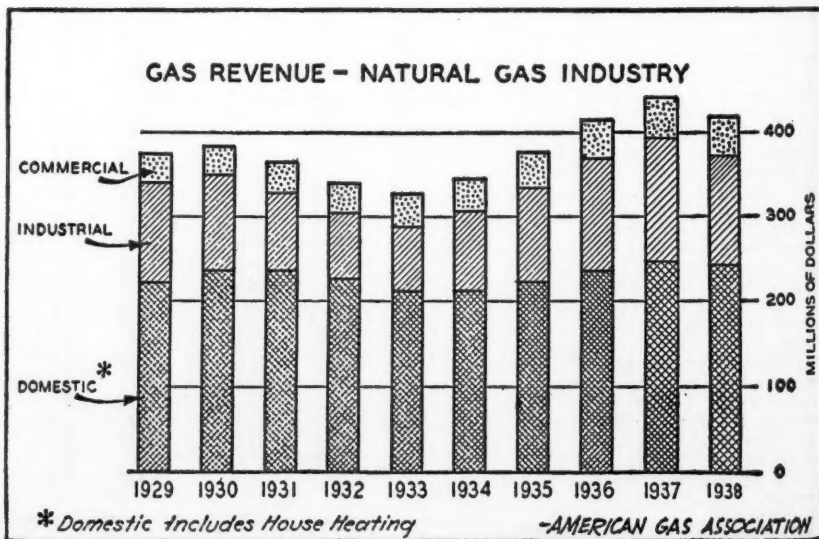
To complete these high spots on latest re-

sults of appliance sales and load building we may summarize the economics by stating that utilities which share the load-building job with dealers paid \$1.05 in 1938 for a dollar of new revenue and the "nonmerchandising" group added a dollar of new revenue for \$1.10. As recently as two or three years ago it was considered customary to pay 75-80 cents for a dollar of residential revenue, so again we have evidence of the extra expenses incurred by utility companies during the past year, to add residential load and revenue.

Continuing, it should be noted that utilities are accomplishing highly laudable results from their selective load building, including the cultivation of the low-use customer who buys kilowatt hours in the higher brackets. The companies which are staying in the merchandising business and thus are better able to direct sales efforts won 1.35 cents from each new kilowatt hour sold in 1938. When the other group of companies are added to the picture, the industry is found to have secured 1.45 cents for each new kilowatt hour sold in 1938. Both figures are a safe distance away from the 9 mills reported in *Electrical World* for the first time in the 1937 statistical issue.

Natural Gas Revenues Decline, Manufactured Gain

REVENUES of the natural gas companies are estimated at \$418,862,000, for



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FINANCIAL NEWS AND COMMENT

1938, a decrease of 5.1 per cent for the year. The decline is principally accounted for by a drop of 15 per cent in unit sales of natural gas for industrial uses.

Preliminary estimates indicate that revenues of manufactured gas companies for 1938 amounted to \$367,714,000, a gain of 2.2 per cent for the year. Sales in cubic feet showed an increase of 1.5 per cent for the year. The unit sales for house heating increased 10 per cent, and all other sales gained 1.5 per cent.

The accompanying charts indicate the trend of revenues for the two divisions of the gas industry during the past decade.

Competitive Bidding and the Northern States Power Offering

THE only important new utility offering in the fortnight ended March 25th was the \$17,500,000 Northern States Power Company (Wis.) first 3½s of 1964, retailed at 106, with two points to the syndicate.

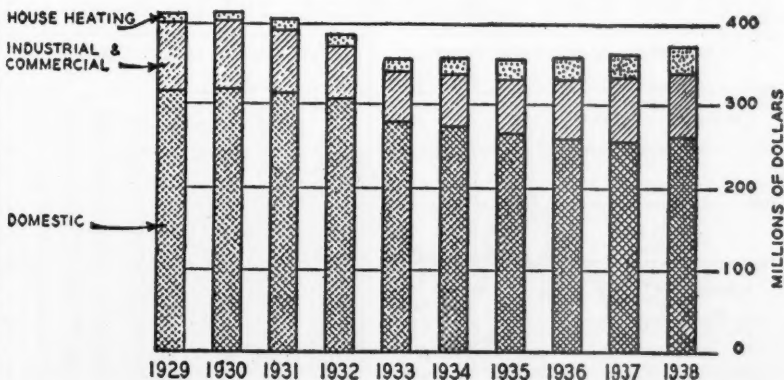
As a result of a protest by Halsey, Stuart & Co., that firm was allowed to bid on the bonds, but the financing was

obtained by the original underwriters, Smith, Barney & Co. The latter firm headed a syndicate composed of 28 firms. The first substantial utility offering in some weeks, the bonds were quickly sold, going to a moderate premium in the outside bond market. *The New York Times* commented as follows:

The eleventh hour decision by officials of the Northern States Power Company to offer its bonds in competitive bidding fell like a bombshell in investment banking circles. Under the Securities and Exchange Commission's "arm's-length bargaining" rule, which became effective on March 1st, the slogan "button, button, who has the button" may become applicable to investment banking business in respect to what banking group is supposed to be handling what piece of business; this, regardless of the fact that the original registration statement of an issue officially names a certain group as the principal underwriter. Months of work, involving the expense of drawing up the indenture, mortgage, and registration statement, to say nothing of the legal fees, undertaken by the banking group which thought that it had the business, apparently are all in vain when a decision such as that made in the Northern States Power Case is left to the last minute. The Cincinnati Union Terminal Case is the most conspicuous recent example of such procedure.

In connection with the current trend in

GAS REVENUE - MANUFACTURED GAS INDUSTRY



-AMERICAN GAS ASSOCIATION

PUBLIC UTILITIES FORTNIGHTLY

Washington toward competitive bidding, Chairman Carlisle of Consolidated Edison Company declared at the recent stockholders' meeting that the greatest deterrent to recovery today is the "log jam" in the capital markets, which, he said, had been caused in no small measure by the "restrictive legislation" of recent years. He said that Consolidated Edison system would not do any financing in 1939 or 1940. Questioned by a shareholder, he declared that even if Consolidated Edison were to undertake any financing in the near future, it would not be on a "competitive bidding" basis. He expressed the belief that such procedure would further deteriorate the present machinery for underwriting, which has not been fully utilized in recent years. The company recently completed a financing program exceeding \$400,000,000 to its complete satisfaction, through private negotiations, according to Mr. Carlisle.

The Federal Power Commission, in recently authorizing Otter Tail Power Company to issue \$1,500,000 bonds, gave some indication that it shared the feelings of the SEC regarding the advantages of competitive bidding. The bonds were to be offered at 98 with 4 points to the underwriters, plus one-half of any amount in excess of 98 if sold publicly at a higher

price. Opposing this arrangement, Commissioner Scott held that open and effective competition upon the part of qualified underwriters was wholly lacking. The spread of \$4 on each \$100 bond, he held, "appears unjustifiable and unreasonable" in view of the fact that 123 utility bond issues have been sold to the public in the last four years in which, for 107 issues, the spread was $2\frac{1}{2}$ per cent or less.

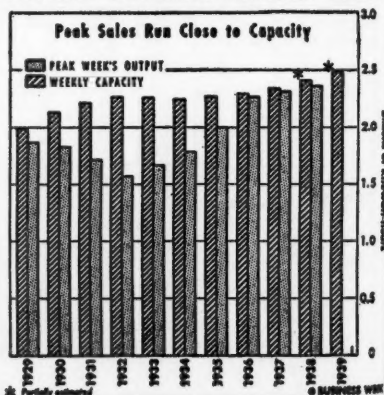
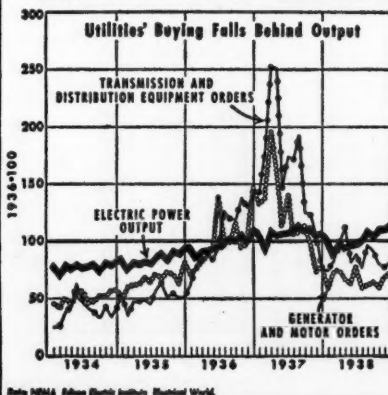
New Financing

RECENT financing included sale of \$1,200,000 Otter Tail Power Company first 3½s of 1949 at 98.

Gatineau Power Company of Canada on March 24th filed an issue of \$62,500,000 first 3½s due 1969, to be issued for refunding purposes. The proceeds will be augmented by the sale of 35,000 shares of 5½ per cent preferred and a \$7,300,000 bank loan. The preferred stock and a portion of the bonds will be offered in Canada. The First Boston Corporation will head the American underwriting group.

Southern Natural Gas Company has obtained SEC permission to sell \$900,000 serial collateral 4½ per cent notes to the First National Bank of Birmingham.

HERE'S WHY POWER COMPANY BUILDING BUDGETS SHOULD RISE



FINANCIAL NEWS AND COMMENT

INTERIM EARNINGS STATEMENTS

	No. of Months Included	End of Period	System Earnings per Share (a)			
			Last Period	Previous Period	Per Cent Increase	Per Cent Decrease
<i>Electric and Gas</i>						
American Gas & Electric	12	Jan. 31(b)	\$2.26	\$2.53	..	11%
American Power & Light (Pfd.) ..	12	Nov. 30	5.51	6.36	..	13
American Water Works	12	Sept. 30	.36	1.38	..	76
Boston Edison	12	Dec. 31	8.38	8.72	..	4
Columbia Gas & Electric	12	Dec. 31	.31	.57	..	45
Commonwealth Edison	12	Dec. 31	2.37	2.08	14%	..
Commonwealth & Southern (Pfd.)	12	Jan. 31(b)	8.17	9.75	..	6
Consolidated Edison, N. Y.	12	Dec. 31	2.09	2.17	..	4
Consolidated Gas of Baltimore	12	Dec. 31	4.06	4.84	..	16
Detroit Edison	12	Feb. 28	6.85	7.04	..	3
Electric Power & Lt. (1st Pfd.) ..	12	Nov. 30	5.74	13.46	..	57
Engineers Public Service	12	Jan. 31	1.16(g)	.98(g)	18	..
Inter. Hydro-Electric (Pfd.)	12	Sept. 30	3.62	18.46	..	82
Long Island Lighting (Pfd.)	12	Dec. 31	4.70	4.82	..	3
Middle West Corp.	9	Sept. 30	.58	.40	45	..
National Power & Light	12	Nov. 30	1.27	1.32	..	4
Niagara Hudson Power	12	Dec. 31	.50	.84	..	41
North American Co.	12	Dec. 31	1.55	1.95	..	21
Pacific Gas & Electric	12	Sept. 30	2.42	2.84	..	15
Public Service Corp. of N. J.	12	Jan. 31(b)	2.41	2.60	..	7
Southern California Edison	12	Dec. 31	2.13	2.21	..	4
Standard Gas & Elec. (Pr. Pfd.) ..	12	Dec. 31	2.95	9.27	..	68
United Gas Improvement	12	Dec. 31	.99	1.09	..	9
United Light & Power (Pfd.)	12	Nov. 30	6.58	8.35	..	21
<i>Gas Companies</i>						
American Light & Traction	12	Nov. 30	1.45	1.77	..	18
Brooklyn Union Gas	12	Dec. 31	2.25	2.57	..	12
Lone Star Gas	12	Dec. 31	.88	1.14	..	23
Pacific Lighting	12	Dec. 31	4.18	4.10	2	..
Peoples Gas Light & Coke	12	Dec. 31	2.48(f)	3.65	..	32
United Gas Corp. (1st Pfd.)	12	Dec. 31	11.98	25.13	..	53
<i>Telephone and Telegraph</i>						
American Tel. & Tel. (d)	12	Dec. 31	8.32	9.76	..	15
General Telephone (e)	12	Dec. 31	1.86	2.00	..	7
Western Union Telegraph	12	Dec. 31	D1.57	3.18
<i>Traction Companies</i>						
Greyhound Corp.	12	Dec. 31	2.05	1.85	10	..
Twin City Rapid Transit	12	Dec. 31	D1.15	1.14
<i>Systems outside United States</i>						
American & Foreign Pwr. (Pfd.) ..	12	Sept. 30	6.76	7.69	..	12
International Tel. & Tel. (c)	12	Dec. 31	1.10	1.60	..	31

D—Deficit.

- On common stock, unless otherwise indicated following name of company; in some cases Federal surtax not deducted.
- Data also available for month indicated.
- Excludes Spanish subsidiaries and Postal Tel. & Tel. Co.
- For ten months ended October 31st the parent company's earnings declined about 15 per cent.
- Including the earnings (exclusive of fixed charges of parent company) of Indiana Central Telephone Company and subsidiaries for periods prior to August 31, 1938, date of completion of reorganization of Indiana Central Telephone Company and transfer of assets to General Telephone Tri Corporation.
- Before reservation for rate litigation, \$5.74.
- Excluding loss of Puget Sound Power & Light Company.



What Others Think

Public Ownership, Utility Service, And the National Defense



WITH the renewal of serious war threats in Europe, and the inevitable repercussions in the direction of preparedness on this side of the Atlantic, the utility industries in the United States are once more reconsidering their position in the event of the outbreak of international conflict and possible domestic emergency. Public ownership advocates are already sizing up the situation with respect to the opportunities which a preparedness program might bring in providing much needed markets for Federal power.

Such was the nature of a speech made on the floor of the House of Representatives on March 3rd by Representative Pierce of Oregon, who saw in the rearmament program a possible answer to the need of Bonneville dam for profitable power outlets. Representative Pierce, who comes from the Oregon district in which the Bonneville dam is located, first reviewed the history of power shortage in the United States during the World War, including the capacity shortage which occurred simultaneously with the freezing up of the winter of 1917, breakdown of transportation, and the dry summer of 1918 and the fuel shortage of the same period. It was this situation which resulted in the suggestion even at that early date for developments along the Columbia river similar to the installation which was actually authorized at Muscle Shoals, Alabama, and later became known as Wilson dam.

Representative Pierce said he was working on a comparative study of Niagara and Bonneville which reveals the necessity at Bonneville for certain operating conditions which would permit the fullest realization and conception of the Bonneville Act. He stated:

Before the days of the modern airship it was the custom to concentrate the nation's supply and gun factories in comparatively narrow areas. Such a concentration plan makes these supply sources vulnerable to modern air attacks. Most of the nation's supply factories are located along the Atlantic seaboard, and in such a narrow area that a small-size fleet of aircraft could put these sources out of commission and reduce this nation's defense to a helpless condition. Modernized defense supply requires the distribution rather than the concentration of the sources. If the nation is to have an adequate defense program, the Pacific coast should have its proportion of such supply facilities. If private capital will not consent to distribute these facilities, then the government, out of necessity, must do so.

The high Cascade range can be made an aircraft barrier from the West. The distribution of supply factories should be both east and west of the Bonneville dam, which is just west of the range. Eastern Oregon and eastern Washington, due to their strategic location and close proximity to the water-borne transportation of the Columbia, are ideal locations for distributed supply sources. Bonneville's power transmission lines should therefore extend eastward. The program submitted by the Bonneville administrator this year contemplates such an extension. In the consideration of the Bonneville appropriation bill, which will shortly be before you, I urge that the defense features be accorded their full measure of importance. If neglected, the results will be tantamount to stripping the North Pacific section of all defense.

Thus it will be seen that if Representative Pierce and other public power project champions can rearrange the national armament program to suit their purpose, these Federal projects will benefit considerably by emergency industrial expansion caused by rearmament. Representative Pierce's subsequent detailed analysis of hydro capacity and reserves, as compared with steam-generated power installation, fails to take into account the military criticism of hydro

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WHAT OTHERS THINK

dams that they are veritable bomb targets covering a wide expanse of ground area and usually in exposed places. And just as a chain is as strong as its weakest link, a dam becomes worthless if a bomb hits any part of it hard enough to make a hole that will empty its reservoir.

The result of such injury would be not only to destroy the value of such a dam for power production purposes, but it might well inflict grave loss of life and property damage through the unexpected flooding of areas below the dam. These are somber thoughts which the average American, prone to assume the impregnability of the continental United States from foreign invasion or domestic sabotage, perhaps rarely entertains.

Furthermore, military and naval experts do not volunteer opinions on the subject for obvious reasons, in view of the pro-hydro political atmosphere which has prevailed in Washington for the last six years. However, it ought to be obvious that it is easier to wreck a mile-wide dam by explosives than a relatively obscure power house using fuel generation. Since Representative Pierce has raised the subject, it would be interesting if Congress were to ask her defense experts what is a more desirable course in developing future power reserves.

Speaking of utility coordination with national defense, the *Bell Telephone Quarterly* for January, 1939, contains an interesting account by Carroll O. Bickelhaupt on war game tests of telephone service which the Army recently conducted in North Carolina.

DOTTED over 20,000 square miles of eastern North Carolina, in an area extending from the Virginia boundary on the north to a point near Wilmington on the south, and inland for from 100 to 150 miles, civilian and other non-military observers were on the alert to detect the approach of hostile aircraft and warn the defending troops. These observers, a hastily organized staff of some 2,000 farmers, merchants, doctors, lawyers, and housewives, were the eyes and ears of a far-flung aircraft warning net spread over 39 counties.

At defense headquarters at Fort Bragg a large map of the area was mounted on one of the walls. The location of each observation post was indicated by a red light, and as posts successively reported the presence of hostile aircraft, a string of glowing red lights showed the path of the invaders. Green lights traced the course of defense planes. Loud speakers enabled officers and others watching the progress of the attack to hear reports as they came in, giving a vivid picture of the progress of the enemy penetration. Radio Station WPTF of Raleigh had a temporary studio here for broadcasting instructions to the civilian population.

All reports from observation posts were handled as regular collect station-to-station telephone calls and, although given emergency treatment by telephone operators, did not take precedence over commercial connections already established, as would be required in time of war. Observers in placing calls for zone message centers preceded their call by the word "Flash" which told the operator that this was an aircraft warning report to be handled in accordance with special "wartime" instructions.

Mr. Bickelhaupt gave the following account of the first "attack":

The vigilance and effectiveness of the observers had several unexpected tests. On the morning of October 15th a large enemy bomber, equipped with a "silencer" to reduce the sound of the motor, flew into the area at over 12,000 feet. It was reported five times by the civilian aircraft warning network and picked up readily near Fort Bragg by antiaircraft observation posts manned by artillery men. The same day a strange plane was reported, the reports tumbling in over each other from alert observers. . . . Sometimes there were discussions among military observers and experts as to whether an attack had reached its objective and been successful or not. There was never any question, however, as to the efficiency of the civilian observers in detecting hostile flights, and as to the dependability of the network of commercial communications which carried the warnings to defense headquarters. Flying 4,000 feet the first night to train observers, invading bombers later flew at 18,000 feet, 20,000 feet, and 24,000 feet, but they could not escape the eyes and ears of the civilian observers, who never

PUBLIC UTILITIES FORTNIGHTLY



New York Tribune Inc.

STILL HUNTING FOR PLACES TO PUT IT

failed to see or hear them and to get the word through to Fort Bragg within three minutes.

EQUALLY interesting was the account of the "blackout" warning. On October 13, 1938, at 7.01 P. M. the order went out of headquarters "blackout immediately." Mr. Bickelhaupt stated:

APR. 13, 1939

Over the commercial telephone systems to telephone chief operators, to "blackout chiefs" in the different communities, to Broadcasting Stations WPTF and WFTC, the order was passed along by prearranged methods. Blackout chiefs used sirens, bells, blinking street lights, and other methods of signaling the townspeople that all lights must be extinguished. The warning at Deep Run was given by a citizen who blew on a fox

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WHAT OTHERS THINK

horn which was reported not only to have been successful as a signal to the neighbors as far as 3 miles away, but also to have drawn an enthusiastic response from the Carolina hound dogs in the vicinity. In some communities the power companies, after several warning "blinks," cut off the power. The "blackout" lasted until 7:47 P.M., when the order "lights on" was transmitted from Fort Bragg in the same way.

The speed with which the telephone network functioned in transmitting the "blackout" order is shown by the fact that the average elapsed time on 76 long-distance telephone calls to 49 towns and on 22 local calls in 5 towns was less than half a minute. In handling these 98 calls, an average of less than thirty seconds elapsed from the time the telephone operator in a given town received the "blackout" order from the zone message center until a connection had been established to the telephone of a "blackout" chief and the call had been answered. The "lights on" order was also handled with the same speed. While these

calls undoubtedly would have taken longer to complete if the telephone personnel and the "blackout" chiefs had not had advance warning, nevertheless the rapidity and accuracy with which they were handled were remarkable.

Although 66 towns were darkened, many motorists apparently did not receive or did not understand the radio warnings and their lights furnished easily discernible highway patterns to the invading planes. Thus, while opinion was divided as to the success of the "blackout" as a military defensive measure, there was no division of opinion concerning the successful functioning of the commercial telephone systems in transmitting raid warnings to the civilian population in furtherance of the plan of defense.

—F. X. W.

Utility Taxes Explained to the Public And the Worker

WITH the sudden and spreading realization among local public officials that an increase in public ownership activities invariably means a corresponding and sometimes embarrassing reduction in tax revenues, an opportunity is being presented for utility companies to show just how important the utility tax dollar is to the state, the county, and the local tax community. Several public utility companies have already utilized this opening even in locations or under circumstances where the particular utility property is not a threatening issue.

One street railway utility in the Middle West recently pointed out that it paid over a million dollars a year in taxes and over two-thirds of it reverted to the city. It is likely that progressive public utility publicity will continue to drive home this pregnant thought that utility taxes ought to be given careful consideration before any proposal for taking the value of utility property off the tax rolls has the effect of killing the goose that laid the golden tax eggs.

Recent publicity released by the Consolidated Edison Company of New York city makes a double use of the utility tax theme—first, for the benefit of the public, secondly, for the edification of the utility company's own employees.

From the public viewpoint, advertisements reproduced in the daily newspapers in New York last February frankly conceded that utility tax money comes from the utility customer, but directed the attention of the customers to the benefits they receive as members of the community through the expenditure of utility tax funds. For example, a utility advertisement pointed out that the city of New York received from Consolidated Edison Company every year enough taxes to pay one-half the annual cost of the police department, or one-fifth of the annual cost of the public schools, or enough to take care of the street cleaning department and nearly enough to maintain the entire fire department. This, of course, was in addition to utility taxes which go to the state and

PUBLIC UTILITIES FORTNIGHTLY

Federal governments and for other purposes.

SOMEWHAT along this same line of reasoning but in reverse operation was an editorial which appeared in *The Progressive* magazine, which is the political organ of the La Follette brothers, published in Madison, Wisconsin. The purpose of the editorial was to show that the "tax dollar" was the best—which is to say, the most valuable—dollar which the citizen pays. Taking the owner of the average Milwaukee residence assessed at \$5,000 as a typical example, *The Progressive* pointed out that the citizen paid \$134.95 to the city of Milwaukee in real estate taxes as compared with \$150 which he paid to private utility corporations operating in the same city for "private services." The bill of the private corporations was made up of monthly

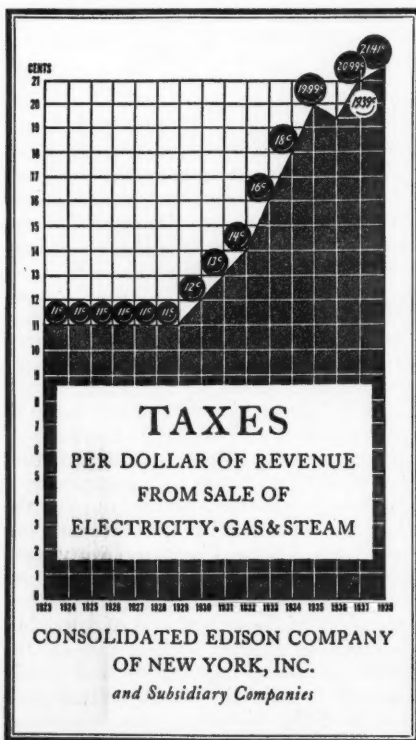
bills for electric, gas, and telephone service, estimated at \$2.50 each, plus \$60 a year for coal, making an annual total of \$150. Against this, there were listed 33 municipal services (subdivided in considerable detail) which a citizen gets for his tax fee of \$134.95.

Nevertheless, in view of the point stressed in the Consolidated system advertisement, it is quite likely that the Milwaukee citizen not only pays for the numerous civic services through his own real estate bill, but pays for them again and again through his utility bills in the form of taxes which the utilities themselves must pay to the city.

ONE other unusual factor about the Consolidated Edison publicity system is its "Annual Report to Employees," in which it makes perfectly clear to the employee that the tax collector is taking an increasing share of utility revenues which might otherwise go towards the payroll. (See accompanying chart.)

The Consolidated Edison Company's revenue dollar for the year 1938 was divided as follows: for labor, 29.4 cents (of which officials' salaries took only a half penny); taxes, 21.3 cents; coal and other supplies, 19.2 cents; dividends to stockholders, 14 cents (9.5 cents going to common stockholders and 4.5 cents for the preferred shares); interest on borrowed money, 7.9 cents, and depreciation 7.8 cents. This disposes of the dollar, all but a small fraction of a cent for miscellaneous assets. The fact that more than 21 cents on the dollar goes out for the system's taxes and almost rivals the system's payroll may cause some surprise, especially in view of the rapid increase in the system's tax expense which has nearly doubled since 1929.

THE average pay of the system's employees amounted to \$36.89 a week, including overtime, which was said to be at least 10 per cent of the national average for the utility industry. The report stressed the fact that a public utility is like a triangle with its three sides representing the rights of the customer, of the



WHAT OTHERS THINK

employee, and of the investor, respectively. Under the heading, "What the Record Shows," the report states:

We believe that even under the difficulties of recent years the system companies of Consolidated Edison have—1, maintained high standards of pay, working conditions, and continuity of employment; 2, sold more services at lower prices; 3, made regular, if reduced, payments to investors.

In discussing the subject of taxes the report points out that the sum set aside for the tax collectors for 1938 was a high for all time. If the pay of the average weekly employee, \$36.89 a week, were taxed at the same rate as the companies, the tax collector would take \$7.90 and leave the employee \$28.99 to live on. It is pointed out that nearly \$4,000,000 was paid by employees and the system companies for social security taxes. This amount is about 5 per cent of the total wages paid in 1938, and is approximately \$11,000 a day. The report stated:

Stress is placed on the matter of taxes because in such amounts they become a grave concern not only to the management and stockholders of these companies but also to the employees of the companies. You can spend a dollar only once. The dollar of revenue which has to go for taxes cannot be given up in rate reductions; it cannot be spent for wages or for dividends.

There is a chart in the report comparing 1938 wages with 1929. This comparison shows the average wage of the weekly employee has increased from \$31.58 a week to \$36.89 a week, and dividends paid on the common stock of Consolidated Edison have decreased from \$3.25 a share to \$2 a share.

THERE are several charts picturing interesting facts about the employees. The average length of service of the Consolidated system employees is twelve years. The average age of the men is thirty-nine, and that of the women thirty-three. Every seventh employee of the system companies is a woman. Of those who work for the companies now, 40 per cent are more than forty years of age. More than 3,500 of the system employees were over forty when hired.

A PROPOS of increasing taxes, there is the recent annual report of the American Telephone and Telegraph Company, which shows that in 1938 Bell System taxes amounted to \$7.54 per telephone. Total tax payments amounted to \$147,400,000, an increase of \$9,700,000, as compared with 1937 and 56 per cent above the 1935 figure. Bell's annual tax bill has risen almost continuously since it amounted to a mere \$10,989,672 in 1919. The 1938 tax bill worked out at 80 cents per month per telephone bill, or 14 per cent, and was about one-third of the payroll. The company's president, Walter S. Gifford, hinted that such increased taxes as well as high wages and other causes may soon require increases in telephone rates.

A recent letter to the editor of the world's largest newspaper, *New York News*, shows that the public is becoming more conscious of the more or less tax exempt character of publicly owned utility operations. The fact that the editor of the *News* saw fit to reply to such a letter with a special editorial makes it of more than passing interest. The text of the letter was as follows:

Editor: We have all been listening for a long time now to New Deal promises about what valuable national assets such things as the TVA are going to prove to be. Power is going to be cheaper; therefore more people are going to use it; therefore more electrical appliances of all descriptions are going to be bought, and business is going to benefit accordingly, at least in these power project areas.

Furthermore, these projects, or many of them, are going to pay their own way. The people who say TVA conceals its true costs and shoulders deficits off on the general taxpayer are just misguided rugged individualists or plain liars.

I am in a fog over all this; don't know how much of it to believe and how much to discount. But I think I know a way to verify it—and incidentally stimulate private investment, which is now pretty timid for one reason or another.

Why not take TVA, for example, out of the general government assets and liabilities classification, and float a bond issue covering its costs up to now and the probable cost of completing the job? Make these bonds yield interest at, say, 3 per cent, and sell them to the general investing public just like any other bonds.

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Washington Daily News

DISPELLING THE GLOOM!

And why not do the same thing with other government projects which, it is claimed, are going to prove self-liquidating? If these dips into socialism are so sound, why not let the investing public in on this good thing?

J. J. J.

REPLYING editorially, the *News* stated:

Our offhand reaction is: Well, why not? Of course, we're not experts in finance, and maybe there is some fatal flaw in J. J. J.'s

proposal. But we think the letter is worth passing on to our readers, and we'd like to have some discussion.

We think it is probable that orthodox Socialists and Communists will be horrified by this proposal to make government enterprises of the TVA type pay interest to bondholders. The notion is highly un-Marxian if we know anything about Marxism.

Nevertheless, schemes like the one J. J. J. proposes are in operation in New York and New Jersey, if nowhere else, and up to now they are panning out well.

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WHAT OTHERS THINK

The Port of New York Authority is an independent corporation, set up jointly several years ago by the states of New York and New Jersey. Its job is to build and operate various public improvements of the kind that can be made to earn money—as distinguished from such things as parks and playgrounds, which cannot be made profitable in terms of dollars and cents for all the profit in social welfare that they yield the community.

This job the Port Authority has performed and is performing very well—too well in the estimation of some people. It built and operates the Holland and Lincoln vehicular tunnels under the Hudson, the George Washington bridge over the Hudson, and the Bayonne, Geothals, and Outerbridge crossing bridges between New Jersey and Staten Island.

It floats its own bond issues for these projects, and amortizes the investments by charging tolls.

So prosperous is the Holland tunnel that the Port Authority is being besieged by agitators for lower tolls — a reasonable and worthy agitation, we believe.

SIMILAR fortunate experiences have been had with the Triboro Bridge Authority and the Henry Hudson Bridge Authority, the latter at Spuyten Duyvil being the most spectacular moneymaker, notwithstanding its toll of only a dime. The *News* editorial went on:

We have believed since the beginning of

the TVA that it ought to pay its own way and yield a reasonable profit—and the same for all other government public works which can be made to earn money. The charges for their services should not be below cost; the general taxpayer should not be stuck for deficits they may incur.

We haven't seen figures to substantiate the persistent vague charges that TVA is concealing deficits by juggling its books.

But it seems to us that a positive test, and a positive check, would be furnished by some such system as Mr. J. J. J. proposes, whether it shocked orthodox Marxists or not.

With a lot of bondholders sitting around waiting to clip and collect on their coupons as they fell due, a lot of voters would be taking a poignant and personal interest in seeing TVA make money. Where your treasure is, there at least a part of your heart is also.

Offhand, and speaking as laymen in these matters of finance, we can't see any valid objections to J. J. J.'s idea. We'd like to hear from anybody who can.

The fact that the *New York News* has been one of the consistent and outspoken journalistic supporters of the New Deal and the fact that New York city is far removed from TVA or any other pressing agitation for public ownership of electric power projects on a large scale add to the significance of the *News* editorial viewpoint.

Gilbertsville As a Symbol of Federal Spending For Power

Now that Congress has agreed, after some dissent in the House of Representatives, to give TVA an additional appropriation of about \$12,000,000 for Gilbertsville dam, the parliamentary struggle over this point may be frankly studied in a now-it-can-be-told atmosphere. Gilbertsville dam is an important link in the program of the TVA for the "coördinated" development of the Tennessee river—a program which is estimated to cost ultimately about one-half billion dollars.

Gilbertsville dam lies near the mouth of the Tennessee river and last year Congress provided \$5,000,000 for prelimi-

nary work and studies of foundation conditions. This year an attempt was made to cut the TVA appropriation as a matter of economy. Republican members of the lower house and conservative Democrats sprang to the attack as a partial answer to President Roosevelt's invariable challenge of "where would you cut," whenever the New Deal program is attacked on grounds of economy.

Little was said in Congress about the need for Gilbertsville dam, although the authorization of a \$12,000,000 expenditure would commit Congress to provide almost \$100,000,000 more to complete the project. Most of the congressional

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argument seemed to be based on the present need for economy; namely, that Gilbertsville is not needed right now and that the administration could just as well let the matter slide until such a time as we can better afford it. This line of reasoning assumes the necessity and desirability of a completed Gilbertsville dam.

In the *Congressional Record* of February 27th, however, there appeared in the appendix an extension of remarks of Representative Joseph J. Mansfield of Texas, who disputes certain factual assertions made by proponents of the Gilbertsville dam. Most of the members of the present session of Congress seem to assume that last year's appropriation virtually committed the Federal government to a high dam at Gilbertsville. Representative Mansfield is not convinced. He pointed out that the chief claim for a high dam at Gilbertsville is that it would provide flood control on the Ohio and Mississippi rivers, which are out of the jurisdiction of the TVA. He cited that engineers familiar with the Mississippi questioned its value for flood control and that situation calls for a report by an independent board of engineers before the Federal government gets in any deeper on the subject.

DISCUSSING the navigation aspect of a high dam, Representative Mansfield stated:

The TVA brief seeks to show by the findings of the 3-judge court at Chattanooga that, theoretically, navigation by high dams is superior to navigation by low dams. The testimony quoted is all theoretical, all in reply to hypothetical questions. Gilbertsville dam was not in the picture at that time, and consequently not mentioned. As shown by the quotations in this brief, no competent witness has ever said that the proposed Gilbertsville lake will be safe for the operation of the Ohio river barges during rough weather. It might be suitable for the operation of certain types of boats, but those are not the boats that are making a success in river traffic under present conditions.

One of the reasons assigned by the Chattanooga court in favor of a high dam over a low-dam system is that with the high dams there would be fewer lockages, and consequently a saving of time. Now let us see how much would be gained by this on the lower Tennessee. With Gilbertsville there

would be one lockage. With the proposed low dams there would be four, to cover the same section of the river. Consequently, Gilbertsville would cut out three lockages.

The War Department advises me that a tow small enough to pass through in one section requires only twenty minutes to pass one of the Ohio river (low) dams. The same time would be required on the Tennessee locks, as they are to be of the same standard. Consequently, the low dams might cause a loss of sixty minutes' time on a 184-mile stretch of the river, embracing a two days' run. I am not surprised that the 3-judge court was shocked at the thought.

But I am reminded by high authority that the high lift at Gilbertsville might frequently require as much time as all four of the low dams combined. It, of course, takes longer time to raise or lower the water in the high locks. Then, the navigator in high lifts always uses extra precautions to avoid accidents or mishaps.

In this connection I will call attention to the fact that the British have been the world's greatest maritime people for many centuries. In constructing the new Welland canal, they divided the 327-foot fall from Lake Erie to Lake Ontario into seven separate lifts, all within a very short distance. They are navigating the canal very successfully. In our treaty on the St. Lawrence seaway, we are proposing to pay to them a very large sum of money for the privilege of using these same locks, and have made no demand to have them reduced in number in order to save time, or appease the wrath of the 3-judge court at Chattanooga. . . .

We have spent many millions in recent years to secure uniformity in inland waterway transportation conditions. We are about to bring that program to a successful culmination. We now have several thousand miles of connecting channels on which loaded barges can be towed without a shift of cargo. Why should we disrupt this program by throwing a monkey wrench in the machinery? The railroads have long since discovered that connecting lines cannot be successfully operated if one has a standard-gauge and the other a narrow-gauge track.

WHAT chiefly bothered Representative Mansfield was the fact that even after Gilbertsville itself is completed, the TVA program, as outlined in its promotional literature, calls for additional work on a companion project known as Dog Island dam. This would cost an additional \$392,000,000. It would submerge farm lands to the extent of more than a million acres and create a lake, approximately 20 miles wide, for

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a considerable distance, thereby requiring extensive changes in the inland waterway transportation system of the area. It would cut the Ohio river transportation into three sections — one for barges on the river below this lake, one for the same type above the lake, and one for a new type of boat to navigate the central section. "It would be somewhat like a standard-gauge railroad at both ends," said the Representative, "with a 175-mile narrow-gauge section in the middle." Representative Mansfield concluded:

So far as navigation on the Ohio is concerned, I will say it is now functioning in a manner that is nearly ideal. If any changes or improvements should become necessary, the Army Engineers can propose them to Congress for its attention. It would certainly be a misfortune to have a divided authority, placing different types of struc-

tures in the river, especially types that will not be consistent with each other. The Dog Island dam would certainly be antagonistic to safe navigation.

As soon as Gilbertsville dam is an assured fact, Congress will be called upon to extend the authority of the TVA to the Cumberland, and near-by section of the Ohio, in order to complete the designated "Gilbertsville-Dog Island project," as described in the TVA booklet entitled, "The Unified Development of the Tennessee River System." That last word, "system," has a significant meaning.

Speaking of flood protection, he added that the Tennessee had already benefited by about \$200,000,000 appropriated for that purpose. He pointed out that we have in the United States many other rivers where the flood menace is much greater than on the Tennessee which have not been so fortunate in Federal aid.

Notes on Recent Publications

A CLASSIFICATION OF PUBLIC UTILITIES—AS AFFECTED BY *NEBBIA v. NEW YORK*. By Bettie Gilbert. 27 *Kentucky Law Journal* 207, January, 1939.

ADDRESS by Fred J. Freestone, trustee of the Power Authority of the State of New York. Consumers Public Power Conference. New York, N. Y. February 23, 1939. Reprinted in *Congressional Record* under extension of remarks of Representative James H. Fay of New York, March 8, 1939.

In this address Mr. Freestone, who was formerly master of the New York State Grange and has for many years agitated for the adoption of the St. Lawrence seaway and power project, renewed his plea for the same by stressing alleged advantages that would accrue to farmers as a result of cheap power development. In the *Congressional Record* reprint, Representative Fay adds his own argument in favor of the St. Lawrence project, dwelling chiefly on comparative electric rate statistics.

A NEW SURVEY OF THE PUBLIC UTILITY SITUATION. *The Financial World*. March 15, 1939. Study of North American Company, March 22, 1939.

This is the opening of what promises to be an interesting series of articles discussing important factors common to the entire public utility industry. The first instalment discusses a fundamental change in the adminis-

tration policy towards public utilities brought on by (1) war threats; (2) recent conservative electoral trends; (3) failure of government spending and a recognition of need for business appeasement. The article may strike some as optimistic in its forthright conclusions that PWA loans and grants for competitive projects have been stopped and that various government bureaus, such as TVA, RFC, and SEC, are striving to make up with the utilities. The succeeding instalments will take up the discussion of single properties. The second instalment, published in the issue of March 22nd, dealt with the North American Company.

CIVIL AERONAUTICS ACT OF 1938—II. By Howard S. LeRoy and L. Alton Denslow. 6 *Journal of the District of Columbia Bar Association* 40. January, 1939.

TVA HELPS COAL INDUSTRY. Extension of remarks of Representative Noble J. Gregory of Kentucky, *Congressional Record*. February 27, 1939.

Representative Gregory attempts to show that "the interests of the coal industry lie obviously in the direction of developing and satisfying this great potential demand for electricity." He hints that the development of industrial markets by the availability of cheap hydro power would result in a net gain to the coal business over a long range.



The March of Events

FPC Rate Survey

THE Federal Power Commission during the last week of March issued another comparison of privately owned and publicly owned electric utilities. It is in three parts: (1) Average typical monthly bills, as of January 1, 1937; (2) taxes, cash contributions, and free services; (3) electric rate reductions and consumer savings. The first two parts are obviously favorable to public ownership. This is especially true of the summaries issued by the FPC for publication.

The summary of Part 1 states that the rates of publicly owned electric utilities are "generally lower" than those of privately owned utilities. The report itself contains no such statement, and analysis of the report reveals a mixed situation. It is shown that typical bills of privately owned utilities are lower than those of publicly owned utilities in 15,272 communities, while the reverse is true in only 3,417 communities.

The showing of lower charges by public plants in 191 communities of 50,000 population or more is based upon operations in only 17 cities, 8 of which are served exclusively by municipal plants and 9 having competitive service. Similarly, in 806 cities of 10,000 to 50,000 population there are only 118 public plants, including 18 in competition with privately owned utilities.

The second part of the report is a repetition of the FPC methods used in 1936 to exonerate publicly owned utilities from the charge that they are generally tax exempt. The actual amount of taxes paid by municipal plants in 1936 amounted to only \$1,204,231. Nothing was paid by such plants in 14 states. The tax payments are lumped with "cash contributions," which are more properly comparable with dividends. This total is compared with the mandatory payments of privately owned utilities, exceeding \$275,000,000 in 1936, and equalling 13.2 per cent of gross revenue. (Taxes have since been increased and are now estimated at about 17 per cent of gross revenues.) "Free services" rendered by municipal plants are computed and used to boost "taxes" paid.

The FPC tax study purports to offset the credit for "free services" to the extent that the municipal government actually pays therefor. It neglects, however, to take into account offsetting contributions in the nature of benefits moving from city governments to city utilities, such as legal services (usually ren-

dered by the city counsel), rent for administrative offices (generally in the city hall), and similar expenses which must be paid by private companies as operating expenses. This section of the report is not divided into population groups.

Part 3 shows the private companies in a more favorable light. Electric rates have been reduced by an average of \$46,120,349 annually during the two and one-half years from July 1, 1935, to December 31, 1937. Of this amount, 95 per cent was attributable to privately owned utilities. The estimated annual savings, based on 1934 revenues, of customers of privately owned utilities were 6.4 per cent, as compared with 5.1 per cent for municipal plants.

Connecticut TVA Scheme

IF authorized by Congress to build a power dam at Enfield, the Federal government proposes to introduce TVA methods into the Connecticut valley and sell power at a lower rate than that allowed at any other Federal power project to date. This plan, approved by Army Engineers, was disclosed recently during a House Rivers and Harbors Committee hearing on recommendations that the Federal government build a power dam at Enfield and a navigation channel between Hartford and Holyoke.

Highlights of the brief hearing last month were admissions by Colonel Raymond A. Wheeler of the Army Engineers that (1) the recommendation a Federal dam be built as part of the navigation project represented a complete departure from existing policy; (2) the Federal government proposed to acquire power company property at Enfield just as in the Tennessee valley; (3) that the Federal government contemplated selling power from the Enfield dam for 1½ mills a kilowatt hour.

FPC Begins Rate Probe

THE Federal Power Commission last month launched an inquiry into Colorado, Wyoming, and New Mexico natural gas rates in spite of the statement of its acting chairman, Clyde L. Seavey, that it has no authority under the Natural Gas Act of 1938 to suspend any industrial gas rate, should such a rate be found unreasonable.

Announcement of the investigation, which affects the Colorado Interstate Gas Company,

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the Colorado-Wyoming Gas Company, and the Canadian River Gas Company, followed a statement on the floor of the House by Representative Everett M. Dirksen, Republican of Illinois, that the domestic rate for gas in Denver is 54 times that for industrial gas.

Both the city of Denver and the state of Wyoming have filed complaints with the commission alleging that rates charged by the Public Service Company of Colorado and the Cheyenne Light, Fuel and Power Company are unreasonable and that charges at the city gates of Denver and Cheyenne are discriminatory, since the same gas is sold at lower rates at other points. Answers to these complaints have been filed by the companies concerned.

The inquiry was hailed by the Federal Power Commission as the most extensive yet made under the Natural Gas Act passed by Congress last year and in effect only a few months, but the revelation that the act apparently gives the commission no authority at all over industrial rates diminishes the scope of the investigation.

Steam Plants Advocated

A PROPOSAL to boost business in the coal fields through development of generating plants powered with coal was endorsed last month by Chairman Smith, Democrat of Virginia, of the House Mines and Mining Committee. He said the plan "would be a big step toward solving the problems of overproduction and unemployment in the soft coal fields," and "if carried out it also would mean hundreds of thousands of jobs for miners now unemployed."

Representative Frank W. Fries, Democrat of Carlinville, Illinois, author of the proposal, added that other thousands of jobs

would be provided through many divergent phases of the program. The Illinois Congressman would create an agency, probably in the Interior Department, to develop the steam-electric plants throughout the country. Such plants, he said, would provide cheap electric power to consumers and consume many hundreds of thousands of tons of coal annually.

Natural Gas Investigation

A RIGID investigation to determine whether Department of Justice officials connived, tacitly or otherwise, to regain for the Columbia Gas & Electric Company control of the Detroit natural gas pipe line and other valuable holdings in violation of a Federal court injunction, was ordered last month by Attorney General Frank Murphy.

The attorney general acted when it was brought to his attention that the Missouri-Kansas Pipe Line Company had filed with the district court at Wilmington, Del., a petition for summary removal of Gano Dunn, trustee of the Columbia's interest in the pipe line carrying gas to Detroit, who was named to this post by the same court.

The "Mokan" petition carried sensational charges involving "flagrant" disregard of the court's previous order, including a direct violation of its most important point within forty-eight hours of its being signed by the court, according to Delos G. Smith, former Federal district attorney at Detroit, now counsel for "Mokan."

Murphy's investigation, it was indicated, may reach in the higher brackets of the Justice Department, as it was run under his predecessor, Attorney General Homer S. Cummings.

Arizona

Seek Gas Franchise Vote

A DEFINITE request that the city council call an election to allow Globe residents to vote on whether to grant a franchise to the Arizona Edison Company, Inc., was submitted to the council last month by Ralph T. Smalley, vice president and general manager.

Proposed rates, costs of services, and other

information were incorporated in the request for the election. Rates for natural gas would be the same as in Bisbee and Douglas, which have the cheapest rates in the state.

A letter was received from the Globe Junior Chamber of Commerce asking that no action be taken on the natural gas situation until residents have had time to study the question thoroughly.

Arkansas

Lighting Contract Signed

DESPITE a written opinion by City Attorney J. W. Dickey filed with the city council to the effect that the proposed contract between

the city of Pine Bluff and the Arkansas Power & Light Company relative to supplying electricity for lighting streets was illegal, the council recently accepted the contract.

Under terms of the agreement, the power

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company will furnish the electric service for three years in lieu of paying city taxes. Mayor James P. McGaughey said that the contract would enable the city to save \$750 this year and \$1,250 in 1940 and 1941. A statement by Mayor McGaughey said:

"Through the generosity of the Arkansas

Power & Light Company we are able to save the city some money by this contract. The agreement had been made before any question of its legality arose. We now are operating under the new contract, and if anyone cares to test its constitutionality, we will welcome the test."

California

Court Grants Delay

FEDERAL Judge Roche on March 20th reluctantly granted the city of San Francisco a 30-day stay in the Hetch Hetchy Case. He stated to City Attorney O'Toole and Special Counsel Robert M. Searls:

"You have been in this court for nearly a year with this case, seeking delay after delay, and now you come here with a request for more time. The rules of this court forbidding dragging out cases should be enforced or they might as well be abolished."

Both O'Toole and Searls protested they were not seeking undue delays. Searls declared the government brief in the U. S. Circuit Court of Appeals cited 167 precedents which must be checked with as many court decisions. The city's final brief, protesting Judge Roche's decision that the Raker Act is violated by the "agency" contract with the Pacific Gas and Electric Company for distribution of Hetch Hetchy power at \$2,200,000 a year, was due to be filed before April 1st, it was said.

Searls said it was probable a further extension of time might be asked.

Connecticut

No Power Shortage

A SURVEY by the state public utilities commission to determine the electric power generating capacity of companies operating in the state and the entire power situation, undertaken immediately after the flood in March, 1936, was recently completed and showed that there was "no possible power shortage in Connecticut," according to a report filed with Governor Baldwin.

In connection with the study the commission had projected the power load requirements throughout the state as of the year 1941. The review took into consideration existing requirements, made generous allowances for

growth, and then revealed that the surplus capacity available for loads in excess of the 1941 peaks was 86,000 kilowatts.

The survey, made with the view of protecting the interests of Connecticut in the event of conditions such as the flood had presented, was said to be of great value in view of the Federal power project in connection with the Enfield dam.

Chief Engineer F. T. McNamara of the state utilities commission in coöperating with engineers of the utility companies, determined on the year 1941 as the proper time for load forecasts. By setting the date ahead, ample time would also be allowed for additional capacity in case of need.

Georgia

TVA Tax Voted

THE state senate on March 17th completed legislative action upon two house bills calling upon the Tennessee Valley Authority to pay the same state, county, and school district taxes as privately owned utilities from which it purchases dams, plants, and other properties.

Representative R. T. Stiles, of Fannin county, said at least \$73,740 in taxes would accrue annually to the state and counties as a result of the legislation. He listed \$54,010 for

Fannin county, \$2,890 for Walker, \$1,023 for Catoosa, \$104 for Dade, \$27 for Murray, and \$15,000 for the state. Stiles said:

"The Tennessee Power Company, which is negotiating sales of its properties to the TVA, had been paying approximately 50 per cent of all the taxes in my county. It has paid 75 per cent of the taxes to support the high school at Blue Ridge and 75 per cent to support the Fannin County High School at Morganton. If we lose all of these taxes, it will ruin us. We'll all have to move out."

He explained that many of the county's resi-

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dents were owners of small homes and that the homestead tax exemption left the county with only about \$4,000,000 valuation for tax-

ation, approximately half of which was made up by the Tennessee Power Company holdings.

Massachusetts

Municipal Plant Bill Killed

THE bill to permit the city of Somerville, through vote of its aldermen, to set up its own municipal lighting plant was killed on March 20th by the state house with a vote of 108 to 87. It lost out by only one vote last year.

The action was taken after Representative Edward T. Brady of Somerville bitterly criti-

cised the members of the legislative committee on power and light which urged defeat of the bill. He accused the committee of voting always for the power and light interests.

Under the present law the city could establish its own plant if the voters of the city on referendum favored it in two separate elections. Under the defeated bill only a majority vote of the aldermen would have been necessary.

Michigan

Tax Difficulties Feared

FEAR that local assessing officers planned to "tax to death" some of Michigan's new rural electrification projects was expressed recently at a meeting of representatives of 14 of the cooperative utilities.

Speakers, pointing out that the cooperatives

were nonprofit organizations, warned that should they be taxed out of existence, they would return to government ownership and thus become tax exempt.

Vincent D. Nicholson, of Washington, general counsel for the REA, said that tax assessments in Michigan for 1938 were not out of line.

New Jersey

To Shift Post

THOMAS N. McCarter, president and founder of the Public Service Corporation of New Jersey, one of the largest utility companies in the United States, on March 21st requested his board of directors to relieve him of his duties as president of the concern, a position he has held thirty-six years.

Mr. McCarter said he felt that, by reason of his "long experience and familiarity" with the affairs of the corporation, he had a definite value to it "which should be preserved." To

this end he recommended creation of the office of chairman of the board, with plenary powers of supervision and direction but free from the routine of the daily detail of management.

He indicated that he had outlined his position so that the board might have ample time to consider the matter in all its phases before taking action at the meeting on April 18th. The board announced on March 21st that, after full discussion, it had approved the plan as a whole. A committee was appointed, however, to consider details and to make recommendations for April 18th.

New York

Niagara Power Plans

THE New York State Power Authority, opposing an application of the Niagara Falls Power Company for permission to divert additional water at Niagara Falls, told an examiner for the Federal Power Commission last month that the company had "abused" its rights. Williams S. Youngman, representing the power authority, said:

"We believe the evidence produced at this hearing will show such serious abuses and violations of the law that it will become the duty of the Federal Power Commission not only to deny the present application, but also to recommend that the license granted the Niagara Falls Power Company in 1921 be revoked."

Hearings on the application, which have been pending eleven years, were resumed before

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Frank H. Hampton, examiner, after the commission had denied the company's request for postponement. The company sought permission to divert an additional 275 cubic feet a second of water at Niagara Falls but protested against the Federal Power Commission hearing prior to a decision in litigation in New York state courts, where the Water Power and Control Commission of New York has challenged its right to divert water.

Randall LeBoeuf, counsel for the Niagara Falls Power Company, renewed the company's motion for an indefinite continuation of the hearing, but was promptly overruled by Mr. Hampton.

The Chamber of Commerce of the State of New York on March 16th answered the state power authority's attack upon the commerce body for recommending repeal of legislation which established the power authority. The Chamber of Commerce's committee on internal trade and improvements, whose report was to be voted upon by the chamber at its April 6th meeting, declared that if there were not already enacted adequate laws to conserve the state's water power resources from exploitation, appropriate measures could be adopted by the legislature to accomplish that end without committing the people of the state to the proposed St. Lawrence seaway canal hydroelectric project.

In advocating passage of the Whitney bill before the state legislature, calling for repeal of essential parts of the Power Authority Act, the Chamber of Commerce's committee advanced eight reasons for its recommendation.

Meanwhile in Washington Representative John E. Rankin of Mississippi introduced a bill in the House of Representatives for the creation of a \$100,000,000 Federal agency to be known as the Niagara River Authority to develop power and navigation facilities. Mr. Rankin explained that the purpose of the measure was to lower power costs to New York consumers after the manner of the Tennessee Valley Authority.

Rural Line Construction

NIAGARA Hudson System companies expect to build 680 miles of new rural electric distribution lines in New York state this year, it was recently announced. When added to the 14,700 miles of rural lines already operated by them, this construction work will complete about 95 per cent of the rural lines ultimately required to serve their franchise territory classified by the New York State Planning Board as suitable for permanent agricultural use.

In announcing the system's 1939 rural electrification program, Alfred H. Schoellkopf, president of Niagara Hudson Power Corporation, stated that the companies had completed 4,950 miles of new rural electric lines in the past four years, 883 miles of which were constructed in 1938. Mr. Schoellkopf pointed out that aside from those companies which serve the irrigation districts of the Pacific coast states, Niagara Hudson ranks second among unified electric operating systems in the number of its farm customers.

North Carolina

TVA Proposal Rejected

THE state house public utilities committee reported unfavorably last month the McBryde bill to create a "little TVA" for the upper Cape Fear Valley. Only McBryde of Cumberland voted against the rejection. The committee had refused, 6 to 4, to postpone action after a hearing at which opposition was expressed by Andrew Monroe, representing the Carolina Power & Light Company.

Major George Gillette of the U. S. Army Engineers, stationed at Wilmington, testified that the proposed development of the Cape Fear might be economically feasible if benefits from flood control, navigation, and hydroelectric power all were combined, but that no one of the three would justify the program.

Major Gillette said the engineers estimated that it would cost about \$20,000,000 to develop a complete power, navigation, and flood control system in the upper stretches of the river, but that a \$2,000,000 development at Fayetteville might be feasible as a first step. He suggested that the program should be undertaken

by degrees, if attempted, so that demand for electricity would keep step with available production. He said it was figured that 334,000,000 kilowatt hours of power could be produced yearly by plants on the river.

Monroe said that the proposed development was in the heart of his company's best territory and it would "seriously hamper" development by the company.

Lower Power Rates

THE High Point city council recently accepted a Federal Power Commission license establishing rates to be charged for power under the city's municipal hydroelectric project. City Manager E. M. Knox said the industrial rates would be about 25 per cent under present rates.

The councilman also authorized issuance of bonds not to exceed \$4,000,000 to finance the project. The cost of the project was set at \$6,592,600, including a Federal grant of \$2,921,600.

Everett Marsh, High Point manufacturer

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and an opponent of the project, told the council he had been advised the Duke Power Company was willing to renew an offer it had made to

the city on February 4th. Marsh also said he had it on good authority that a drastic rate reduction was impending.

Oregon

Governor Signs Bill

GOVERNOR Charles A. Sprague on March 15th signed the so-called people's utility district bill, which was one of the most controversial issues of the 1939 state legislative session. The legislature adjourned on March 15th.

The measure was signed in the presence of members of the senate railroads and utilities committee and the pen used by the governor later was presented to Senator W. E. Burke, Yamhill county, author of the original utility district bill.

After passing the senate the measure went to the house, where it was decided to reintroduce it as a house bill. The only amendment made in the house was elimination of the emergency clause. It subsequently passed the house and the senate later concurred.

The purpose of the bill was to make it easier to organize people's utility districts.

U. S. Representative Walter M. Pierce, Democrat from La Grande, had asked Governor Sprague to veto the bill. He asserted the measure would discourage use of Bonneville dam power. The Congressman said he feared the bill would rob the state of many

Bonneville benefits by making it difficult for coöperatives to establish themselves as distributors. He had advocated broad public power legislation similar to laws adopted in Washington and Idaho.

Utility Bill Defeated

STATE Senator U. S. Balentine's bill requiring public utilities holding a franchise to make their records and reports available to county officials went down to defeat in the senate last month by a vote of 16 to 12. The measure came before the senate on a divided report. A majority of the railroads and utilities committee recommended its defeat.

Senator Balentine said the bill was important for the reason that county officials would be able to obtain a list of utility properties, together with other desirable information.

Senator F. M. Franciscovich, of Clatsop county, said the bill "would not serve any useful purpose and should be defeated." He told the senate that all utility information was now in the hands of the state utility commission, where it could be obtained by county officials.

Pennsylvania

Senate Passes Gas Lease Bill

AFTER postponing action of the Philadelphia gas lease sale bill, which would prevent the state public utility commission from fixing rates of any municipally owned utility, the senate Republicans last month passed the bill. Democrats opposed it because it would remove all power of the commission to correct service, quality of gas, water, or power provided by any of the many public service companies owned by Pennsylvania cities and boroughs.

Governor James on March 21st signed the bill, paving the way for sale of the gas works rentals. The bill transferred from the state utility commission to the municipal gas commission the power to fix Philadelphia's gas rate.

The house subsequently approved, 152 to 2, a measure amending the Municipal Authorities Act so the Philadelphia body could not set the gas rate there.

The Philadelphia city council, given a clear path on March 24th by the state supreme

court's approval of the proposed sale of future gas works rentals, began immediate preparations to pay off the city's accumulated \$40,000,000 deficit and balance the long overdue 1939 budget. In a sweeping ruling, the court turned down a taxpayer's suit to prevent the sale of 17½ years' rentals for \$50,000,000.

The decision was viewed as wiping out all obstacles to the city council's acceptance of the sole bid received for the \$4,200,000 yearly rents, which will total \$73,500,000. That bid was made by the Philadelphia Corporation, set up for the purpose by A. Webster Dougherty, investment broker.

House Passes Ripper Bill

OVERRIDING the Democratic minority, house Republicans on March 21st passed finally the state public utility commission "ripper bill," despite attacks on its constitutionality.

The bill, which provided for removal and appointment of state public utility commissioners by a majority of the senate instead of

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the present two-thirds, was sent to the senate for concurrence. Considerable opposition was expected.

The bill contained a "joker," permitting removal of a commissioner for "political activity," and was said to be aimed apparently at the three remaining Democratic members of the 5-man commission.

Constitutionality of the bill, and motives of its sponsors, were questioned during a debate preceding roll call. Voting almost strictly along party lines, the legislators passed it, 118 to 68.

Rate Increase Proposed

THE Peoples Natural Gas Company recently proposed a new schedule of rates in Harrisburg which would raise the monthly gas bills of 90 per cent of its Pittsburgh district patrons

and reduce those of the remaining 10 per cent. Increases would be borne, in the main, by residential and small industrial consumers, while the reductions would be distributed among larger gas-consuming industries and gas-heated homes.

The rate change, subsequently suspended by the state public utility commission for a period of six months, would have increased the company's revenues \$1,200,000 a year, according to J. French Robinson, president of the company. The change would not have become effective until May 16th—sixty days after filing of notice.

The Peoples Company serves 149,000 consumers in 11 western Pennsylvania counties, principally Allegheny and Westmoreland, stretching as far east as Altoona. Slightly different changes were proposed for the Altoona-Tyrone area.

Rhode Island

Balk Survey Costs

ALTHOUGH former Governor Robert E. Quinn on several occasions declared the electric public utilities of the state had agreed to bear the cost of the \$225,000 survey made last year by Frederick H. Young, the utilities have notified Governor William H. Vanderbilt that they do not believe themselves obligated.

Disclosing the stand of the utilities recently, Governor Vanderbilt said he was asking Attorney General Louis V. Jackvony for an opinion on the matter. He said allowance for the collection of the \$225,000 had been made in his budget, and if Attorney General Jackvony substantiates the claims of the utilities,

additional taxes would be necessary to make up the \$225,000 shortage.

The utility firms claim that inasmuch as no public hearings were held during the Young investigation, they are not legally required to pay for the survey.

Horace L. Weller, director of the department of business regulation, informed the governor that no agreement existed with the utilities for their paying for the survey. The Blackstone Valley Gas & Electric Company, however, advised the public utilities administrator of a verbal agreement on its part to contribute toward the expense of the survey on the express condition other companies involved share in the expense.

South Carolina

Santee Chairman Appointed

APPPOINTMENT of Tom B. Pearce, of Columbia, as chairman of the Santee-Cooper Authority was announced last month by Governor Burnet R. Maybank. The chairmanship was relinquished by the governor himself when he was inaugurated.

Recalling the service Mr. Pearce had rendered the state and the Santee-Cooper project as chairman of the old South Carolina Board of Public Works, the governor said he was "most fortunate in gaining Mr. Pearce's consent to serve."

In 1931 Mr. Pearce was made chairman of the joint power rate investigating committee, known as the "Pearce committee," to report to the state legislature on public utilities in South Carolina. The committee's report and

recommendations resulted in reducing power rates by many millions of dollars in the years since, it was stated. The committee's work also resulted in creation of the utilities division of the then state railroad commission, now the public service commission.

Mr. Pearce has also served in the state legislature and as mayor of Charleston.

Santee Reports Progress

WORK on the Santee-Cooper hydroelectric project "has been progressing as rapidly as safety would permit," the public service authority informed the state house of representatives on March 23rd in a long accounting.

At the request of the house the authority, administrative body for the \$37,000,000 project, listed all expenditures made by it and de-

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tails of all work done so far. The information was requested in a resolution offered by the Berkeley county delegation.

The authority's report listed every check drawn by it since the last annual report but carried no totals.

Tennessee

Purchase Price Set

THE Middle Tennessee Electric Membership Corporation, operating north of Shelbyville and east and north of Nashville, would be asked to pay \$488,000 as its part of the purchase price of Tennessee Electric Power Company properties, it was announced recently.

J. A. Krug, TVA chief power engineer, named this figure on March 22nd after a conference with officials of the coöperative, which will serve about 3,000 customers. Krug said the corporation officials, headed by their attorney, Lon McFarland of Lebanon, "appeared very much pleased with the proposed territorial allocation and the tentative purchase price."

Shelbyville on March 23rd became one of the first municipalities to approve a contract proposed by the TVA for purchase of Tennessee Electric Power Company properties in that area. The city's share of the cost was set at \$331,000. The contract was accepted late March 22nd.

Similar action also was said to have been taken by Athens, in east Tennessee. The purchase price there was fixed at \$339,000.

Company Operates Properties

A CHARTER was issued on March 15th to the Memphis Generating Company, a new corporation with 51,000 shares of \$100 par value common stock, which will take over the Memphis power plant and other properties of Memphis Power & Light Company which will not be sold to the city of Memphis or the Tennessee Valley Authority.

The new stock will be issued to pay Memphis Power & Light, subsidiary of National Power & Light Company, for the properties Memphis Generating will operate. Memphis Generating will contract to sell TVA power generated at its 54,000 kilowatt-hour capacity steam plant, and will also enter into an agreement with Memphis Gas Company, subsidiary of Commonwealth Gas Corporation, for purchase of natural gas which will continue to be used to fire boilers.

The city commission on March 14th gave its sanction to a 15-year contract with Memphis Natural Gas Company, calling for a 10 per cent reduction in wholesale rates. The reduction would become effective following transfer of Memphis Power & Light Company's gas and electric systems the city and TVA have agreed to buy. The natural gas firm pipes

fuel in from Louisiana and sells it wholesale to Memphis Power & Light.

The decrease, expected to total \$75,000 annually, applies only to fuel resold by the city for residential cooking and heating purposes and straight-use commercial gas.

Asked to Replace Tax

THE Tennessee Taxpayers' Association on March 21st disclosed that it had sent letters to members of Congress asking that the TVA Act be amended to provide for reimbursement to state, county, and municipal governments for anticipated tax loss through the sale of private utilities to the TVA and public power agencies.

The letters, signed by C. W. Bailey, president, and William R. Pouder, executive secretary of the association, asserted:

"The insertion in Senate Bill 1796 and H. R. 5068 of mandatory provisions for continuing to state, county, and municipal government all the present tax payments on those electric utilities sold to the Tennessee Valley Authority would assure the citizens and taxpayers of Tennessee of an equitable solution of the grave problem now pending."

Purchase of the private utilities, the letters said, "brings our state and local government in Tennessee face to face with the problem of replacing the \$3,500,000 of annual revenues which will be lost through the exemption of these properties from taxation unless remedial legislation is promptly enacted."

One or two alternatives now are open to relieve the anticipated loss, it was stated. One would mean "increasing heavily the taxes levied upon homes, farms, and other taxable property." The other alternative: "Securing from the Tennessee Valley Authority and the municipal electric distributing agencies a continuation of the tax payments which have heretofore been made by the privately owned electric utilities."

Plans for a gross receipts tax on properties taken over by public agencies were dropped by the state administration recently and the TVA announced it would "coöperate" with the state in offsetting the anticipated loss.

Heeding the plea of the Tennessee Taxpayers' Association that Federal legislation be enacted to replace the \$3,500,000 taxes expected to be lost by TVA absorption of Commonwealth & Southern properties, Representative Sam D. McReynolds on March 24th asked the House Legislation Drafting Committee to prepare a bill making all TVA properties in

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Tennessee taxable. It would also provide that all properties to be bought by municipalities be restored to a mandatory taxing basis as at present.

The Norris-Rankin amendment to the TVA Act to liberalize TVA functions struck a snag in the House on March 25th. Representative Andrew J. May of Kentucky, chairman of the House Military Affairs Committee, served notice on Representatives Rankin and Stearns, who have introduced duplicates of the Norris bill in the House, that he proposed to hold hearings on the bills, but not until after the Senate had passed the Norris bill and sent it to the House.

Senator Bridges, Republican of New Hampshire, subsequently stated he had drafted legislation to make property of the TVA subject to state and local taxation and would offer it as an amendment when the Senate takes up the Norris proposal.

Independent Appraisals Urged

THE TVA, it was announced recently, would recommend to all cities involved in the proposed Commonwealth & Southern-TVA deal that independent surveys similar to the

one carried on in Nashville be made by the various municipalities.

J. A. Krug, TVA power planning engineer, said he had consulted with three nationally known engineering firms to determine estimated costs and time necessary to complete quick surveys similar to Nashville's. Krug said that the TVA was considering making appraisals to determine financial feasibility of the entire project as it affected various cities, in connection with the surveys recommended to the municipalities involved.

Nashville's determination to assure itself that the TVA-proposed plan to purchase Tennessee Electric Power Company properties was financially sound evidently changed the minds of TVA heads and swung them to the decision that other cities should take the same route of self-assurance.

The appraisal firm of Stone & Webster of New York, employed by the Nashville Power Board to ascertain the scope of Nashville's TEPCO properties as a "self-liquidating" agency, estimated revenues anticipated under TVA rates, and other data, would have ample time to make its written report before Senator Norris gets his purchase enabling act through Congress, it was said.

Texas

LCRA Dam Slated to Be Raised

THE legislative proposal to require the Lower Colorado River Authority to maintain its reservoirs at 50 per cent of capacity to prevent valley floods was halted recently by the filing of an agreement in the state senate which was ordered printed in the *Journal*. It was acceptable to Senator L. J. Sulak of La Grange, author of the 50 per cent reserve storage bill, who filed his acceptance.

The agreement was based almost entirely

on the addition of 78 feet to the height of the Marshall Ford dam and the dedication of the 804,000 acre-feet thus added to flood control. If this is not done Sulak reserved the right again to offer his bill, now abandoned, and press it to passage. It was his district that was badly damaged by flood last July when the gates of Buchanan dam were opened and allegedly doubled the flood volume.

The authority declared its policy in the resolution adopted and placed it in the senate record.

Wisconsin

WDA Thrown Out

WITHOUT a word of debate, the Republican-Democrat coalition in the state senate on March 15th threw out the Wisconsin Development Authority Act, created in 1937 to promote former Governor La Follette's program of public ownership and operation of utilities. Following strict party lines the senate voted, 19 to 9, to concur with the assembly in passage of the Budlong bill repealing Wisconsin's "little TVA" act. Governor Heil signed the bill on March 18th.

The death of WDA, however, does not mean the end of rural electrification work, it was

said, because the administration has a bill in the assembly to create a Wisconsin rural electrification coordination division in the department of agriculture and markets.

John A. Becker, general manager of the "little TVA," cheerfully endorsed the new measure and proposed two changes. He asked that "at least" \$18,000 be appropriated for the first year, instead of the \$15,000 provided by the bill. He claimed the smaller sum was "not sufficient," but added that \$15,000 might be enough for the second year.

He also suggested the bill be amended so that the new division would "assist" instead of "coordinating" efforts of rural coöperatives.

The Latest Utility Rulings

Right to Impounded Funds Unclaimed By Customers



THE ancient doctrine of *bona vacantia* was unsuccessfully urged by the state of Illinois in support of its claim that impounded funds in a telephone rate case, unclaimed by patrons, should be turned over to the state. The court, although showing slight regard for the doctrine, actually based its decision on the theory that the period of limitation for making claims had expired and that subscribers were barred from making any claims, with the consequence that the state was similarly barred if it sought to step in in place of the subscribers.

A lower court, in denying the state's claim, ruled that an earlier decree providing for distribution of the impounded funds after termination of rate litigation in favor of the telephone subscribers was final, and since it made no provision for payment of unclaimed funds to the state, which was a party to the proceedings, the state could not assert such a claim. The higher court disagreed with this theory, holding that there was no thought of unclaimed refunds at the time of the earlier decree and that this matter was not concluded, but the lower court retained jurisdiction to make further orders on the subject.

The doctrine of *bona vacantia* is in substance a doctrine that property lack-

ing an owner shall belong to the state. It was argued that this doctrine was recognized by the common law of England prior to the year 1606, which was the fourth year of James I. The common law on which the state relied was said to be of such an uncertain and indefinite nature in its scope and limitation that the court would not be justified in proclaiming its existence as a rule of Illinois applicable to the situation presented.

Even though the doctrine were recognized, said the court, the argument of the state was predicated upon a foundation which was unsound in that the subscribers at the time when the state made the claim were neither in possession of, nor the owners of, any property or right of claim. The subscribers were not the owners of the fund or of any part of it in the possession of the telephone company by reason of the overcharges which they had paid. They had only a claim for a refund. A relation of debtor and creditor existed. For those who failed to make claim in the time limited by the decree of the court such relation was terminated. After such time, said the court, there was no longer a debt in existence. *Illinois Bell Telephone Co. v. Slattery et al.* (U. S. Circuit Court of Appeals).



Contract for Public Utility Service Not Automatically Renewed

THE automatic renewal doctrine applying to leases and to some employment contracts is not, according to a ruling of the New York commission, applicable to a contract between a water

company and a municipality for hydrant service. This opinion was expressed in a case where the commission assumed jurisdiction to fix rates for hydrant service because of the absence of a contract

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between the parties. The New York commission has no jurisdiction over such service when governed by a contract.

The commission cited judicial rulings limiting the automatic renewal theory to real estate transactions and cited a court decision that these rules are technical and applicable to real estate but have never been applied to personal property. In another case cited it was said that contracts other than leases do not automatically renew themselves from year to year. The commission said that there are a great number of cases in the reports where contracts between water companies and

municipalities have expired and the companies continue serving the municipalities after such expiration. In such cases the company sues on the theory of implied contract. Commissioner Van Namee concluded with the statement which follows:

Counsel to the company in his brief cites many authorities. I have failed to find one case which holds that a contract made for a year between a water company and a municipality automatically renewed itself at the expiration of the year.

Re Spring Valley Water Works & Supply Co. (Case No. 9618).



Commission Denies Approval of Lease Of Gas Line

APETITION by Producers Gas Company for approval of contracts entered into between it and Godfrey L. Cabot, Inc., was denied by the New York commission. The Producers Gas Company is a domestic and public utility corporation supplying gas in New York state. Godfrey L. Cabot, Inc., is a Massachusetts business corporation engaged in drilling for and in the transportation, wholesaling, and distribution of natural gas in northern Pennsylvania and southern New York. Commissioner Burritt, announcing the opinion, said:

The contract, under consideration in this proceeding, is somewhat unusual in form in

that it provides both for the sale of gas and for the transmission of gas through pipe lines of the Producers Company. If it is intended that the contract merely provides for the sale of gas and for its incidental transportation through the lines of the Producers Company, it does not require our approval. This appears to be the situation.

Even if it is not, the record shows that Godfrey L. Cabot, Inc., is a foreign business corporation. The leasing of property of the Producers Company, a domestic corporation, to such a foreign corporation is contrary to commission policy as not in the public interest. Further, it is doubtful if such a business corporation has any legal right to engage in the intrastate transportation of gas in New York state.

Re Producers Gas Co. (Case No. 9142).



Exhaustion of Remedies before Commission

AN equity court, according to a ruling of the supreme court of Illinois, cannot interfere with the process of rate making until a public utility company has exhausted its remedies before the state commission. This ruling was made in a case where a gas company had secured an injunction against the enforcement of lower rates than those which the company sought to establish. The supreme court held that the lower court was without jurisdiction to interfere.

The court discussed the procedure provided by Illinois statutes for changing rates, making the observation that with respect to rate cases the statute governing and the practice before the Illinois commission are substantially the same as the statute and procedure governing the hearing of such cases before the Interstate Commerce Commission. The court said that a suitor must exhaust his administrative remedies before seeking the extraordinary relief of a court of equity,

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and that the administrative body must have an opportunity to correct its errors and thus do away with the necessity for a resort to the courts.

In the case under consideration it was said to be apparent that the company had not done all it could do under the statutes to get relief, and it was therefore obvious that resort to the courts was premature. The company could have applied to the commission for a rehearing of its petition to put a higher rate schedule into immediate effect, and, if a rehearing had been granted, there would be no necessity for resort to the courts. Also the company could have made application to establish reasonable rates.

The company, it was said, was not free to disregard the administrative procedure set up by statute, which, in the opinion of the court, is eminently adapted to afford due process of law, and ask for relief

at the hands of a single judge. The court said that it was not concerned with the wisdom of the legislative policy to have public utilities under the supervision of a body of men experienced in that field rather than under the courts, but as long as the statute was reasonable and afforded due process of law there was no doubt of the legislature's power to make the statutory remedy exclusive.

The court also held that the judicial review provided by the statute was adequate, pointing out that if resort may be had to the courts without the risk of incurring excessive penalties, due process of law is afforded. It was said that plainly the Illinois statute does not hinder access to the courts by excessive penalties. Adequate provision is made for the stay of proceedings pending appeal. *People's Gas Light & Coke Co. et al. v. Slattery et al.*



Water Service Charge Not a Lien on Property

THE court of appeals of Maryland reversed a judgment of the Baltimore City Court dismissing a petition for a writ of mandamus directing the city authorities to restore water service to a customer's property located outside the city limits.

The court thought the question presented on appeal to be whether a public utility under a duty to supply, without discrimination, its service to all persons applying therefor, may refuse to serve a person who has acquired title to the property from an owner served by the utility, unless and until the new owner pays all charges and arrearages due by the former owner to the utility for service rendered before the transfer.

The court said that, unless made so by statute, water service charges are not a lien on the property served. Therefore, in the absence of statutory or contractual authority, the utility cannot discontinue such service to property to coerce the owner into paying charges incurred by a former owner.

While the court recognized that the

city charter authorized the city to enforce payment of water bills just as it would enforce payment of taxes, it stated:

The statute does, it is true, authorize the enforcement of the payment of such charges by the "same process that city or state taxes are collected, or they may be collected by process before a justice of the peace, or in any of the courts of the city of Baltimore having jurisdiction of such cases," but that very language indicates in the clearest way that it was not intended to apply to the collection of charges for delivering water to property beyond the territorial limits of Baltimore.

"If the purpose and intent of the municipal water utility's rules was to authorize discontinuance of its service to property because the owner thereof failed or refused to pay the water rent due for service to a former owner, the rule was unreasonable and void," the court said.

The court said that the new owner was under no obligation to pay charges for services to the property which had accrued before he took title by accepting a deed to the property, because those

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charges were not a lien on the land but a personal debt of the former owner, and since the present owner had tendered payment of all charges accrued since it

took title, the tender should have been accepted and the service restored. *Home Owners' Loan Corp. v. Mayor and City Council of Baltimore*, 3 A. (2d) 747.



Abandonment of Trolley Service Approved

THE Pennsylvania Public Utility Commission conditionally approved the abandonment of the operation of trolley cars between two cities and approved incorporation of a transit company, as well as its right to operate passenger carrier service by motor vehicle between fixed termini.

In considering the question of track removal and repaving on the streets affected it seems that no time limit for such removal and repaving had been set in the various agreements and the burden of going ahead with such work had been shifted to the department of highways and the municipalities involved. With regard to this the commission said:

When a street railway company petitions to cease rendering service and abandon its rails, ties, and appurtenances without providing for the removal thereof within a reasonable time, it threatens to create a public nuisance which will prove dangerous to the traveling public generally, as well as dangerous to other transportation agencies subject to the public utility commission which may be required to use said streets and which are

required to render safe and adequate service to its patrons, employees, and the public. Acquiescence of the municipalities and the department of highways by agreements with the company to leave the rails in the streets, either through bills of sale or payment of stipulated sums of money by the company, should not defeat the interests of the public welfare and relieve applicant from performing its common law liability within such time and under such conditions as we may deem to be just.

For those reasons the commission determined that jurisdiction over the matter of removal and repaving of the areas so disturbed lies with it; that such removal and repaving should be done in such manner as not to endanger the safety of the public.

The commission remarked that it does not look with favor upon the consolidation of a nonoperating street railway company with a bus company, or upon long-term leases of public utility properties. This latter matter was not, however, involved in the present case. *Re S. & N. Transit Co. (A. 52708)*.



Revision of Telephone Rates in Metropolitan Area

THE Michigan commission adopted a new plan for telephone rates in the Detroit metropolitan area, calculated to result in substantial savings to telephone users. This was in response to complaints of subscribers in Detroit and its suburbs relative to claimed inequitable toll charges for service between locations within that area. The commission was of the opinion that the Detroit exchange, which covers an area of 270 square miles, had become too large to have only one toll rate center.

The first feature of relief under the commission's order provides that a new type of optional local service be offered in each zone of the Detroit district exchange, such service including all the features of the existing local service plus a certain amount of interzone service. A second form of relief is provided whereby the Detroit zone of the Detroit district exchange will be subdivided into 7 areas for the application of interzone unit charges, the areas contiguous to a suburb in each case to be included in the flat rate

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calling area for the residence extended area service subscribers in that suburb.

It was said to be desirable in order that discrimination between communities be avoided, that all the local rates, limited area as well as extended area, within the district exchange be coordinated with a well-balanced system of charges reflect-

ing the extent and scope of the service to the various zones, but since the proceeding had been limited to the elimination of inequities in charges for calls between Detroit and its suburban exchanges, no revision in the existing local limited area rates was made. *Re Michigan Bell Telephone Co. (T-252-39.1).*



Hauling of Own Property Not Public Utility Service

A DAIRY company taking delivery of milk at farms of producers and hauling the milk to its plant was held by the Maryland Court of Appeals not to be engaged in hauling milk for hire. It was, therefore, not operating unlawfully without authority from the commission.

The company had notified producers that upon loading milk upon its trucks the milk became its property and that any subsequent loss would be the dairy company's loss, although the price was to be determined subsequently. The

court made the following explanation:

... there is no statute vesting in the public service commission authority to exercise jurisdiction over the transportation of one's own property. A person hauling his own property for himself is neither a common carrier nor a public carrier for hire. The public service commission, acting under a specially conferred grant of power by the legislature, exercises only a limited jurisdiction, and where a jurisdiction is so limited, it will be strictly construed.

Weller et al. v. Kolb's Bakery & Dairy, Inc. 4 A. (2d) 130.



Motor Express Service Disapproved Where Existing Service Is Adequate

THE circuit court vacated an order of the Illinois Commerce Commission granting a certificate of convenience and necessity to a motor express company and left in full force and effect the commission's first order denying the application. The court said that in reviewing orders of the commission it is the duty of the court to determine not only whether or not the commission's findings and conclusions of fact are reasonable and supported by substantial evidence, but also whether its ultimate conclusions are supported by its findings and are in accordance with the laws of the state and constitutional requirements.

In setting aside the order granting a certificate, the court said:

... there are other controlling reasons why the second order cannot be allowed to stand. The reasoning adopted by the com-

mission in completely changing its ultimate conclusions in the case is unsound and contrary to a long line of decisions in which our supreme court has construed and elucidated the public policy of this state under the Public Utilities Act. These decisions have determined that it is the established public policy that through regulation of an existing carrier occupying a given field and protecting it from competition it may be able to serve the public more efficiently and at a more reasonable rate than would be the case if other competing carriers were authorized to serve the public in the same territory.

The court further said that the commission's order granting a certificate must be held to be unreasonable and unlawful where the record shows not only the adequacy of existing carriers' service but also their expressed willingness and ability to perform any additional service which the commission might reasonably

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and lawfully find required to meet the public convenience and necessity in the territory covered by the application, even to the extent of supplementing their existing rail and express services by additional motor vehicle service.

Finally it was held that in considering

an application for a certificate of convenience and necessity to establish a competing service, rates are not the only thing to be considered, since the public is also vitally concerned in adequate transportation facilities. *Re Keeshin Motor Express Co., Inc.*



Street Car Men Object to Bus Substitution

A LOCAL street car men's union filed a petition with the Utah commission for rehearing on the matter of substituting bus service for street car service. The objection was offered that a number of their operators who were trained street car men were unable to operate busses and had operated street cars for so long that they probably would not be able to become qualified as bus drivers. The commission answered with the statement which follows:

Relative to this matter, this commission would not feel justified in attempting to pass on the ability of the men to operate busses;

neither do we care to suggest the solution of the problem, although we fully realize the importance of this problem to the men affected.

This commission is of the opinion that the principal factors it should take into consideration are the comfort and safety of the public and the convenience and necessity of any operation. It is doubtful if the matter of employment may properly be considered by us.

It does appear, however, that a reasonable time should be allowed to make some adjustment with respect to the employees of the company.

Jones et al. v. Utah Light & Traction Co. (Investigation Docket No. 15).



Other Important Rulings

THE public service commission of Wisconsin held that when complaints are brought before the commission for formal action at the instigation of one who is not a party at interest and whose sole interest is that of personal gain, the complainant will be required to make a *prima facie* showing that they are or may be adversely affected. The commission felt that such action is necessary to avoid incurring unnecessary expenses on the part of the utility and the commission's staff. *Klinzing v. Wisconsin Power & Light Co. (2-U-1400).*

The appellate court of Illinois ruled that where the state supreme court has held that a public utility's lamp service charge combined with its energy charge is illegal, and where the commission has

subsequently approved a tariff schedule including such a lamp service charge, the statutory remedy of a patron instituting proceedings before the commission is exclusive and it precludes an original suit in court for an injunction against the charge and for an accounting. *American Generator & Armature Co., Inc. v. Commonwealth Edison Co. 18 N. E. (2d) 735.*

The Wisconsin Supreme Court held that the purchase of property, to be used as a city hall and utilities office, with utilities funds and assets and the crediting of utilities with part payment of their debt to the city, was not unauthorized simply because the commission's approval had not been obtained. *Reetz v. Kitch et al. 283 N. W. 348.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports*.

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Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND
RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 27 P.U.R.(N.S.)

NUMBER 3

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MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Haverhill Gas Light Company

[D.P.U. 5688.]

Rates, § 186 — Reasonableness — Burden of proof — Profit from increase.

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2. An increase in gas rates in a community where, because of severe unemployment, customers are curtailing living expenses and using other fuels should be disallowed when estimated benefits to the company will be more than offset by the disadvantages, loss in business, and loss in good will, p. 132.

Depreciation, § 21 — Annual allowance — Relation to production.

3. The policy of setting aside for depreciation an amount which, added to maintenance expenditures, would over a period of years represent from 10 cents to 15 cents per thousand cubic feet of gas manufactured, depending upon the cost of maintenance, material, and labor, is neither a scientific nor an accurate method when under different conditions the same rounded figures for annual depreciation are arrived at, p. 133.

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Depreciation, § 39 — Adequacy of fund.

Statement, in dissenting opinion, that the maintenance of a substantial depreciation fund benefits both the ratepayer and the stockholder, p. 144.

(GRANT, Commissioner, dissents.)

[January 31, 1939.]

INVESTIGATION of proposed increases in gas rates; increased rates disapproved.

APPEARANCES: P. M. Wentworth and L. A. Keen, for the petitioner; George E. Dalrymple, for the city of Haverhill; Albert P. Wadleigh, for the town of Merrimac.

By the COMMISSION: The Haverhill Gas Light Company on January 14, 1938, filed with the Department schedules of proposed rates and charges to become effective February 1, 1938. Upon the filing of said schedules the Department ordered an investigation upon its own motion (D.P.U. 5594) to determine the propriety of the rates and charges therein

contained. A public hearing was held on February 8, 1938, after which the operation of the schedules was suspended by vote of the Commissioners until July 1, 1938. On June 23, 1938, the company voluntarily withdrew the schedules.

On July 15, 1938, the company filed new schedules of proposed rates and charges to become effective on August 1, 1938, whereupon the Department voted to suspend the schedules and entered into an investigation as to the propriety of the schedules upon its own motion. Public hearings were held on this second petition on Septem-

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ber 12, 1938, and December 22, 1938. The evidence introduced in the prior proceedings was incorporated by reference. No requests for rulings were submitted by the company at the hearings. Under General Laws (Ter. Ed.) Chap. 164, § 94, the rates may not be further suspended, and the matter must be now disposed of.

The company was organized in 1853, and manufactures and distributes gas to approximately 15,000 customers in the city of Haverhill and the communities of Groveland, South Groveland, Merrimac, Amesbury, Salisbury, and Salisbury Beach, besides selling gas at wholesale delivered to other companies, the Newburyport division of the Haverhill Electric Company, the North Shore Gas Company, and the Exeter (N. H.) Gas Company. The production plant and main offices of the company are located in Haverhill.

The schedules of proposed increases and changes in the rates apply to the retail customers of the company, and are intended to increase their payments to the amount of \$30,000 yearly. At the hearing on December 22, 1938, the company claimed that for the twelve months ending November 30, 1938, after deducting \$35,000 for depreciation, that its net profit represented a return of a little less than 3 per cent on its capital stock, including all premiums heretofore paid in by the stockholders. The total par value of the capital stock is \$1,228,500 and premiums, \$260,910. It appears from the returns of the company filed annually with the Department that in 1926 the number of customers amounted to 17,003, and for the calendar year 1937, there were but 15,011. Computations

from exhibits in the case disclose that the annual revenue per customer has been decreasing. The company has been able to reduce substantially the unit production cost per thousand cubic feet as compared with 1926.

The Haverhill community is an industrial area suffering severely from unemployment. Its per capita welfare relief costs are among the highest in the commonwealth. The workingmen class is the largest user of gas, as there is very little demand for industrial purposes. Ordinarily the reason justifying rate increases is to meet rising costs in production and distribution. But here it may be fairly inferred that the principal cause and chief factor for the falling off in the profits of the company may be largely attributed to severe competition by much lower-cost, unregulated fuels, such as coal, coke, and range oil, which has resulted in a decrease in the average yearly gas consumption of its customers. Many customers use both gas and such lower cost fuels. It may also be stated that adverse economic conditions affecting the earning powers of the customers of this locality have required the wage earner to curtail his living expenses. Under these circumstances it is difficult to comprehend how competition, mostly responsible for the lessening of the profits of the company, can be successfully overcome in Haverhill by further increases in rates, which action on part of the company may be used by competitors for psychological effect.

The schedules purport to increase the rates to consumers using less than 3,100 cubic feet monthly. This class constitutes 92.1 per cent of the customers' bills rendered. Other calculations from the evidence tend to show

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that 13.5 per cent of the customers' bills show use of 300 cubic feet or less, that 64.9 per cent of the customers' bills rendered show use of 1,500 cubic feet or less, consuming but 33.7 per cent of the gas sold; at 2,000 cubic feet, 77.9 per cent of customers' bills rendered and a little under 50 per cent of the gas sold; at 2,500 cubic feet, 86 per cent of customers' bills rendered and 62.7 per cent of consumption.

[1] The burden of proof rests upon the company to establish to our reasonable satisfaction that the proposed increases will result in greater profits to the company in this particular district and at this time, and without regard to what the effect might be at other places. The predictions of the company as to increased profits cannot be more than estimates and largely a matter of prophecy under the abnormal conditions now affecting its business at or near Haverhill. The company by limiting its demand to \$30,000 and the statements made in the record as to the uses to which such increase is to be put, apparently concedes that there exist commercial prohibitions in its territory limiting the full measure of compensation usually claimed by public utilities. There was no evidence presented at the hearings as to reproduction costs of the property of the company. As to capital honestly and prudently invested, 46,140 shares of the 49,140 shares outstanding of the capital stock and premiums were paid in under the formal approval of the Department. The last order on the subject is dated November 19, 1929 (D.P.U. 3317), at which time capital stock of the par value of \$245,700 was added to the capitalization of the company.

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[2] While we cannot find any decisions exactly in point, much is said in the able opinion of the late Chief Justice Rugg in *Donham v. Public Service Commission*, 232 Mass. 309, 319-326, P.U.R.1919C, 880, 891, 122 N. E. 397, which throws light upon some of the regulatory issues arising in this case. It is unnecessary to prolong this discussion by including many pertinent quotations from that decision. While that case involved the rates of a street railway company in the hands of a receiver and the problem was not so much the securing of a return of any particular amount on the investment, but of meeting the necessary and unavoidable costs of furnishing the railway service to the public, yet the effect of competition upon the earnings of a public service company upon the constitutional right of fair return was there discussed at some length with reference to many authorities. The manufactured gas industry in Massachusetts is not analogous to that of the electric industry. Rates for gas are considerably higher than formerly; electric rates have been going down. The company also reports an increasing loss in the sale of residuals such as tar and drip oil. There is a reference in the *Donham Case*, *supra*, however, to the decision of the Public Service Commission under review in that case, which we believe is analogously applicable to this proceeding. The Commission there said: "Other factors have entered in, but, making all due allowances, it is quite clear that increases in fares impose a burden upon the public which considerably exceeds the benefit which they bring to the companies. . . . Still more disturbing, moreover, is the fact that, even if

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the new fares should prove unsuccessful in producing the revenue desired, experience has shown that it would be well nigh impossible thereafter to reduce them." It is our opinion that the amount that the company estimates that it will benefit by the proposed increased rates will be more than offset by the disadvantages, loss in business and in good will, that will result in an attempt to raise gas rates in manner proposed, at this time, in Haverhill, when most of the customers have available,—and many are now using gas and other much lower cost fuels at the same time,—and can turn to the latter without much difficulty. Accordingly, we deem it the duty of the Department to disallow the schedules of rates.

[3, 4] We do not see why the company cannot declare a dividend of 4 per cent on its capital stock after putting aside a reasonable depreciation charge and passing something over to surplus even under the present conditions. The amount of \$35,000, charged annually in operating expenses for depreciation in late years, is an arbitrary figure. It has been the policy of the company during recent years to set aside for depreciation an amount which, added to the maintenance expenditures, would, over a period of years, represent from 10 cents to 15 cents per thousand cubic feet of gas manufactured depending upon the cost of maintenance, material and labor. This method is neither scientific nor accurate since under differing conditions the same rounded figures of \$35,000 are arrived at. The company already has accumulated an ample depreciation reserve of approximately \$530,000. Since 1931, the average

annual retirements have been about \$10,800. To go back even for a period of seventeen years the retirements have not averaged more than \$14,000 yearly. Annual charges to maintenance during all these years undoubtedly involved many substitutions of new for old parts which tends to keep down accrued depreciation, so that charges to maintenance and depreciation properly may be considered together. *Lindheimer v. Illinois Bell Teleph. Co.* (1934) 292 U. S. 151, 78 L. ed. 1182, 3 P.U.R.(N.S.) 337, 54 S. Ct. 658. The company's distribution system, almost 50 per cent of its entire plant, consists of buried mains and services not so exposed to damage and wear and tear from the elements as the poles, wires, and other outside equipment of electric lighting companies. The plant is in good condition and is giving good service. We might also add that the management fees, amounting to $2\frac{1}{2}$ per cent of the gross revenues, might also be reduced in view of the falling off in net profits. In 1929, under more favorable conditions, the management fee was considerably lower. In *Re Lowell Gas Light Co.* (Mass. 1937) 22 P.U.R.(N.S.) 138, a company serving 25,000 customers, it was decided that management costs could well be reduced under conditions here comparable.

If conditions fail to improve, it may be necessary to readjust the rates of the company to secure a more adequate return, and conditions may also arise which will warrant a substantial departure in the form of rates now in effect.

Accordingly, after notice, public hearing and consideration, it is

Ordered, that the schedules of rates for gas filed with the Department by

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the Haverhill Gas Light Company on July 15, 1938, to become effective on August 1, 1938 (M.D.P.U. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10), the operation of which schedules was suspended by the Department until January 31, 1939, be and hereby is disapproved and disallowed; and it is

Further ordered, that said schedules of rates filed July 15, 1938, be and hereby are canceled and that the rates in existence at the time of the filing of said schedules remain in effect.

And it is

Further ordered, that said investigation by the Department as to the propriety of the rates and charges stated in said schedules filed by said company be and hereby is discontinued.

GRANT, Commissioner, dissenting: I cannot concur in the opinion of my associates that, notwithstanding the steadily declining earnings of the Haverhill Gas Light Company in the face of continuing heavy costs for maintaining service the company is not en-

rates are promotional in character and follow the accepted modern rate-making principle that, as progressively larger quantities of the commodity are used, the unit price is uniformly reduced. On the whole, the schedule of rates and charges filed represents a general increase, particularly to low-use customers, and the company estimates that it will result in an annual increase of \$25,000 in the amount of net revenue received from gas sales.

The revenue of the Haverhill Gas Light Company has decreased consistently since 1930, in which year it reached the peak of its earning capacity. A comparison, year by year, of the revenue received by the company from gas sales since 1922, when the present Haverhill rate was established, eloquently illustrates the rise and fall of its fortunes from the post-war period, when there was a general upward trend in rates and prices, to the present low level of economic values. This may be seen from the following table:

	1922	1925	1930	1933	1937
Revenue from gas sales	\$526,144	\$628,022	\$717,251	\$584,537	\$551,900
Operating expenses	384,663	458,190	512,719	397,063	427,824
Taxes	49,309	67,926	78,801	83,517	86,933
Net earnings	108,498	99,400	133,836	96,124	45,575
Per cent return on par and premium	15.45	9.08	8.98	6.45	3.06

titled to increase its revenues. On the contrary, I am of opinion that an increase in prices currently charged for gas is essential to enable the Haverhill Company to maintain proper service.

The rates before the Department for approval have been drafted in accordance with suggestions made to the company by the Department's engineering division, and provide actual reductions to gas customers whose consumption normally exceeds that of the incidental user. The proposed

It may be observed that there has been a loss in revenue during the period from 1930 to 1937, inclusive, amounting approximately to \$170,000, or 23 per cent. The greatest loss took place between 1930, and 1933 and, although there has been a tendency toward leveling off since the latter date, revenues have continued on the downward trend. The figures for the full year of 1938 were not available for consideration at the time the hearings were closed, but an exhibit intro-

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duced by the company showing earnings for the twelve months' period ended November 30, 1938, indicated a further shrinkage in revenue and net earnings.

This shrinkage in revenue has been offset, in part, over the 8-year period, 1930-1937, by a reduction in operating expenses resulting principally from the smaller quantity of gas produced to meet present requirements. The following table shows the number of cubic feet of gas sold to general consumers and the average amount of revenue received therefrom per thousand cubic feet:

Year	M cu. ft. Sold	Avg. Revenue Received
1922	395,893	\$1.305
1925	440,808	1.299
1930	545,150	1.195
1933	441,674	1.157
1937	449,480	1.057

It is interesting to note that, although there has been a decided drop in the amount of gas sold to general consumers since 1930, there has been an increase in the output sold to such customers since 1933, accompanied by a decrease in the amount of revenue received and in the average revenue per thousand cubic feet from such sales. This leads to the conclusion that the use of gas for cooking and other ordinary household purposes has declined during the past four years and that the sale of more gas for other purposes, mainly space-heating, at rates considerably below those charged for domestic use is responsible for the drop in average revenue received per thousand cubic feet of gas.

The situation here presented involves a privately owned and operated gas company, subject to regulation by

the public authority, which, due to prevailing conditions beyond its control, finds itself projected from the status of a monopoly into the field of open competition. While remaining subject to the conditions imposed by its franchise, which include regulation of service and determination of the propriety of its rates by the commonwealth, it must compete in the marts of business with the producers and distributors of coal, oil, coke, and electricity, all save the last-named of which may sell their commodities at whatever price they see fit.

In the broadest perspective it may not be far from the truth to say that, under present conditions, a gas company is no longer a public utility. It is certainly not so to be classified in the sense that a corporation, to which have been granted letters patent conferring certain exclusive rights, may be said to be a public utility. Except for the fact that the nature of its business requires the use of the public ways for its mains, a gas company, in the light of the radical changes that have occurred in the economic world of today, is intrinsically very little different from a coal or coke company or a distributor of fuel oil.

If the Haverhill Gas Light Company was not subject to the jurisdiction of this Department and was free to exercise its own discretion in the matter of rates and prices, the management of the company would be bound, in the establishment of such rates, by the natural laws upon which the success or failure of any industrial venture depends. The elements of competition and the value of the service to the public would be controlling. It would also have the right of election

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as to which customers, or classes of customers, it would serve.

Being a public utility it has no such right of election but must furnish gas, upon reasonable terms, to any one and everyone who presents himself as a customer. It has not liberty to contract upon special terms with individual users of fuel; a right inherent in private business corporations and by them exercised under a constitutional guaranty of protection. Within reasonable classifications, all who apply must be served without discrimination. A dealer in fuel oil, in the exercise of good business judgment, is often obliged to make substantial price concessions in order to acquire or retain a particular customer. A gas company may not do so without violating the express conditions under which it is permitted to operate. The inevitable consequence of such competition is a steadily diminishing use of gas for purposes for which cheaper substitutes are available.

A large number of those whom the Haverhill Gas Light Company is presently required to serve are what are known as "convenience" customers; persons whose fuel requirements are casual or intermittent. Upon the basis of present rates the revenue received from many such consumers is insufficient to compensate the company for the out-of-pocket expense of the service rendered. To illustrate: during 1936 more than 13 per cent of the monthly bills sent out in the Haverhill district were for 300 cubic feet of gas or less and 65 per cent of all monthly bills sent out during the year were for a gas consumption of 1,500 cubic feet or less. In the Merrimac-Groveland district the percentages were even

higher; 20 per cent of the bills being for less than 300 cubic feet or less and 71 per cent for less than 1,500 cubic feet. In Amesbury, the corresponding percentages for similar consumption figures were 20 per cent and 76 per cent.

It is frequently stated that an increase in the price charged for gas which places a larger proportionate burden upon customers whose average gas consumption is small, is discriminatory against that class of consumers least able to pay. As a generic statement of fact this is not true. Studies of customers' meter installations show conclusively that the "convenience" or incidental user of gas usually is a person at least of average means; in fact, the increase in the number of small-use customers that has taken place in recent years in the gas industry is traceable in considerable part to an increase in the number of apartment-type dwellings and the growing preference for homes of this kind by persons of both sexes who do not maintain large families and have not the necessity for extensive cooking facilities.

The question here to be considered is whether, under the circumstances, the rates and charges filed by the Haverhill Gas Light Company are reasonable. Whether or not a given rate is reasonable and sufficient to constitute a fair return upon the capital invested in a utility is a question that should be approached with a practical viewpoint, considering not only the matter of fairness to the investor who has put his money into the gas company, but also the manner in which those charged with the responsibility of operating the company under its public franchise have conducted the business.

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The rule followed in this commonwealth for the past one hundred and thirty-five years and latterly espoused by the President of the United States in a public expression of his views upon the subject of utility regulation—the so-called “prudent investment” theory—is perhaps best expressed in the dissenting opinion written by Mr. Justice Brandeis in which his associate, the late Justice Holmes, also a Massachusetts jurist, concurred, in the case of *Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission*, 262 U. S. 276, 67 L. ed. 981, P.U.R.1923C, 193, 201, 43 S. Ct. 544, 31 A.L.R. 807. This rule is stated in page 290 of the opinion as follows:

“The investor agrees, by embarking capital in a utility, that its charges to the public shall be reasonable. His company is the substitute for the state in the performance of the public service; thus becoming a public servant. The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business. Cost includes not only operating expenses, but also capital charges. Capital charges cover the allowance, by way of interest, for the use of the capital, whatever the nature of the security issues therefor; the allowance for risk incurred; and enough more to attract capital. The reasonable rate to be prescribed by a Commission may allow an efficiently managed utility much more. But a rate is constitutionally compensatory if it allows to the utility the opportunity to earn the cost of the service as thus defined.”

I am of opinion that, other things being equal, consideration attaches to

the important factor of management. As a regulatory body this Department has no right to trespass upon or interfere with the right of a gas company or other public utility to exercise its honest discretion. But whether or not a utility company has been efficiently or badly managed is a matter of which the Department is bound to take notice in any proceeding involving the establishment of rates or the character of service. The merits of this case are not confined to the question of rates. They involve the question of service to the community as well, both as to the nature of past operations and the ability of the company efficiently to function in the future.

If it is our concern to see that gas rates be not increased to the point where they become intolerably burdensome to the community or exceed the fair value of the service rendered, there is likewise an inescapable obligation to so regulate such rates that the character and quality of the service may be maintained upon a basis which the public has a right to expect.

This Department cannot avoid its responsibility to protect the equitable interest of the people of Haverhill and of the other districts served, in the continued prosperity of the Haverhill Gas Light Company. So long as we retain control of the operations of such a gas company by regulation; so long as we continue to approve or disapprove the issue of its securities and of the nature and propriety of its rates and charges, we are accountable for the kind and character of service rendered by the company.

Justice requires that a regulatory Commission be equally diligent in approving increases in rates, where the

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circumstances make it obligatory, and in compelling reductions whenever such appear to be warranted. To fail in this important duty, irrespective of the side upon which error is made, is to nullify the very purpose for which regulation was created.

The earnings of this company have decreased from \$133,836 in 1930, to about \$44,000 in 1938, a return slightly less than 3 per cent upon the par value of its capital stock, plus premiums paid into its treasury. The expense of doing business has, over the same period, shown no comparable reduction because of the fact that the company still is required to serve substantially as large a number of customers as it did nine years ago. Operating expenses in 1930, including amounts set aside for depreciation, totaled \$512,719. In 1937, the total was \$427,824. The number of customers' meters in 1930, as shown by the company's returns on file with this Department, was 16,051; while in 1937 it was 15,011.

It is important to consider whether or not the rate at which the Haverhill Company is now earning is sufficiently compensatory to attract fresh capital. The mere rate of return upon stock and premium is not of itself conclusive, for there is a great difference among individual companies as to the attractiveness of their securities to the investor. A rate of 3 per cent, while considerably lower than the rate of return presently being received by many other utilities, might reasonably be held, in the case of a large company with a well-distributed load, under certain conditions, to be compensatory. On the other hand, it might well be unreasonable to hold a small company,

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serving customers limited in numbers as well as by the nature of the service rendered, to such a return. There have been cases involving small utilities in which the loss of a single large commercial customer, due to factory abandonment or the departure of an industry to some other community, has accounted for the difference between ability to operate at a reasonable profit and operation at a loss, or at a greatly diminished rate of return.

The question of allowance for the risk assumed by the utility investor in putting his money into a business regulated by the public, is particularly important in this case in view of the increasing inroads into a field hitherto enjoyed as a virtual monopoly by the gas industry, by producers and distributors of competitive fuels. These private competitors are subject to no regulatory power save their own consciences and the law of supply and demand.

Confronted by such a situation, there is the stern possibility that, at some near future date, the producers and distributors of gas may find themselves in a position similar to that of the operators of street railways at the end of the World War. In such event, without public ownership or subsidy, little reliance can be placed upon rate adjustments as a balancing factor in meeting the expenses of conducting the business. There is a definite "ceiling" which limits the amount that the public will pay for any type of utility service, particularly where there exists an alternative to the use of such facilities. In the case of the street railways, the traveling public turned to the motor vehicle when railway fares were raised. In the case of the

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gas companies, already there is manifest a trend to the use of electricity and fuel oil. The most pertinent question dealing with gas rates at the moment is whether an increase such as that proposed by the Haverhill Gas Light Company will bring in the receipts anticipated.

In the cases involving the Bay State Street Railway Company, decided in 1916 and 1918, by the Public Service Commission, a predecessor of this Department (P. S. C. 1085 [P.U.R. 1916F, 221] and P. S. C. 2300 [P.U.R.1919A, 817]), the difficulty of predicting with certainty the effect of increased rates is well illustrated. In the first of these orders by the Commission, issued August 31, 1916, the company was denied permission to increase its rates of fare in urban centers of population, but provision was made that, upon subsequent filing, a schedule increasing certain other fares would be permitted upon a trial basis, the Commission indicating its views in the following language (P.U.R. 1916F; at p. 330):

"Any readjustment of fares involves so many uncertain factors that it is manifestly impossible to estimate accurately in advance the results which will accrue from the changes indicated herein. If, after an experience of not less than one year under the new rate schedule, the situation might appear either to the company or to the public to warrant a further revision of rates, the Commission is prepared upon application to deal with the situation anew in the light of conditions then prevailing."

On July 3, 1917, before the expiration of the trial period of one year authorized in this decision had ex-

pired, the Commission authorized the company to increase the unit of cash fare on its lines in the urban districts from 5 to 6 cents, it having become apparent that the restricted increase allowed in the prior decision was insufficient. This authorization was also qualified, however, by the proviso that the increase thereunder allowed should be tried upon an experimental basis for a period of six months. On December 13, 1917, the company went into receivership.

The Bay State Street Railway situation next came before the Commission in 1918 when the receiver appointed by the court to take charge of the business of the company filed a new schedule of rates embodying certain further increases. This was disallowed on December 20th of that year by the Commission (P. S. C. 2300) and, after an unsuccessful appeal to the courts, the company was reorganized as the Eastern Massachusetts Street Railway Company under an act of the general court providing for a modified form of public management. The question of what might have been the result had the company's rates been approved as originally filed, was left undecided, except as the fate of trolley lines generally throughout the country may be said to have decided it.

Any comparison between the gas industry and street railways should take into consideration the fact that there are available for gas certain additional uses developed in the recent past; an advantage not possessed by the street railways during the war-time crisis. These include space-heating, refrigeration, and air-conditioning. The difficulty is that all three are highly competitive.

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In the matter of space-heating the effect of competition is particularly noticeable. In order to get the business a gas company must offer its product at a rate not so high as to render the cost to the consumer prohibitive. At the same time the rate for gas sold for space-heating may not be so low as to constitute discrimination against customers whose use of gas is confined to other purposes. Thus it all reverts to the ambiguous proposition that a gas company today, while retaining the form and obligations of a regulated monopoly, engaged in an enterprise which the government itself properly might undertake, is in fact no monopoly at all if we might ignore the legislative precept that no one else engaged in selling gas may lay their pipes and conduits in the public streets where there is an existing franchise.

Unless we are prepared to say at this time that the gas business, stripped of its former lucrative lighting load by its principal utility competitor, electricity, and now striving to compete with coal, coke, and oil, is a dying industry which no regulatory measures can preserve, there is a duty upon this Commission well to consider the prospect that failure to allow such a company to earn more than the existing rates will permit, may be the means by which the economic life of the company shall be terminated.

Under the "prudent investment" theory it is conceded that in addition to the prescription of a rate of return, based upon the reasonable cost of conducting the business, "the reasonable return to be prescribed by a Commission may allow an efficiently managed utility much more." This Department had that principle clearly in mind

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when, following an investigation upon its own motion of a schedule of rates filed by the Lowell Gas Light Company to become effective July 1, 1937 (D.P.U. 5418 [22 P.U.R.(N.S.) 138]), it disallowed the rates then proposed by that company, largely upon the ground that its business was not efficiently managed and conducted. And while such comparisons do not always truly reflect conditions which are properly comparable, it is interesting to note here that the rates of which the Haverhill Gas Light Company now is seeking approval are practically the same as the existing rates of the Lowell Company.

If a majority of this Commission had seen fit to allow the new Haverhill Company rate schedule, embodying the structural changes strongly recommended by our own engineers to set up the schedule upon a practical, modern basis, the rates of this company would still be considerably below those of many other companies and would approximate the average for gas rates charged in this commonwealth. A comparison of the rates of the Haverhill Gas Light Company with those of seventeen other Massachusetts gas companies, all serving urban communities, submitted in evidence at the public hearings in this case as "Exhibit No. 2," shows the present flat rate of \$1.25 per thousand cubic feet for the first 10,000 cubic feet, to be considerably below the average rate for gas in this state, based upon a composite of the seventeen companies referred to.

Let us now consider the contention, often expressed in rate proceedings, that an increase in rates does not necessarily result in a corresponding

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increase in revenues. There is, unfortunately, no concrete example before us, involving a privately owned company, in recent years from which to draw conclusions, due to the fact that the well-nigh universal tendency through the depression has been to refuse increases of any kind to utility companies generally. There is, however, an excellent illustration of the fallacy of this argument as a general statement of fact in the experience of the Gas and Electric Department of the city of Holyoke, a municipal plant, serving both gas and electric customers.

The Holyoke municipal gas plant is comparable to the Haverhill Company, both as to territory served and type of service. Prior to May 1, 1938, the rates of the Holyoke plant to customers using 3,000 cubic feet of gas or less per month were approximately the same as that now being charged under the existing Haverhill rate. For approximately six years previous to that date the Holyoke gas plant's operations had been conducted at an actual deficit, as a result of which, on May 1st last, a new schedule of rates was put into effect by the city, representing an increase from \$1.25 to \$1.50 net, for the first 1,000 cubic feet of gas used.

Figures representing operations during the full year of 1938 show a substantial increase in revenue received from gas sales, notwithstanding the fact that during the first four months of the year, including January and February, when the average daily load is heaviest, the old rate was effective. Receipts during 1937 totaled \$294,997.68; in 1938 they were \$315,119.03; these figures being fur-

nished in advance of the annual report of the Holyoke Gas and Electric Department upon request. The loss due to gas operations in 1937 was \$31,155.54. The increase over 1937 receipts during 1938 amounted to \$20,121.35, leaving a net loss for 1938 of but \$11,034.19, which, in view of this year's experience, probably will be wiped out entirely by operations over a full year at the new rate in 1939.

Perhaps even more convincing than the actual increase in revenue during 1938 is the fact that, notwithstanding the higher prices charged, the sales of gas by the Holyoke plant showed an increase from 279,762,600 cubic feet in 1937 to 283,234,500 cubic feet in 1938, a percentage increase of 1.24 per cent. It would therefore appear that the increase in the rate charged for the first block of 1,000 cubic feet of gas sold, has not discouraged customers of the Holyoke plant from the use of gas to any appreciable extent and has overcome, in considerable part, the difficulties to which the city has been subjected in gas operations during the past six years.

Before leaving the subject of Holyoke, it is well to consider in weighing the advantages of good management, that the Holyoke municipal plant, itself considered to be capably administered, but without the liability of having to pay taxes, charging practically the same rate per thousand cubic feet of gas, and serving approximately the same number of customers, has not been able to show a profit for a considerable period. The Haverhill Company concurrently has managed, at least, to keep its accounts in black figures, while paying local, state, and municipal taxes, including increased assessments

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in 1937 and 1938, for social security payments, amounting to \$78,801 in 1930, \$83,517 in 1933, \$86,933 in 1937, and a slightly higher amount in 1938. The taxes for the later years would undoubtedly have been much higher except for the fact that, as local tax rates have increased, the amounts due to the commonwealth and Federal government as taxes upon income, have decreased in direct proportion to the company's loss in earnings.

The Haverhill Company is owned by Massachusetts stockholders for whom Stone & Webster, Inc., act as managers. No criticism was made at the public hearings by anyone as to the manner in which its operations are conducted. It is conceded that it is a well-managed company. There is objection, however, to the form of compensation which the company pays to the management corporation, said compensation being based upon a figure which includes a bonus of $1\frac{1}{2}$ per cent of its gross earnings.

The fee paid directly to Stone & Webster, Inc., in 1937, was \$14,348. The basis upon which the amount of this compensation is arrived at was described at the hearing held December 22, 1938. It consists of a flat fee of \$1,500 per year, plus $1\frac{1}{2}$ per cent of the gross earnings, plus a small amount based upon the capitalization of the company. To all intents and purposes, however, it may be said to consist of the \$1,500 guaranty and the percentage on earnings.

Without doubt the services performed under this management contract enure to the benefit of the company. It has the advantage of the management company's extensive credit and purchasing resources,

standardized forms, expert engineering service, and general supervision. The management of the company estimates that, exclusive of the benefit received from the supervision and experience of the Stone & Webster organization, there is a direct annual cash saving of \$5,000 to the company on purchasing and insurance.

There is no question but that this management fee is open to attack upon the basis of its assessment. It is not reasonable to charge for such services upon the basis of gross earnings. Either there should be definite charges representing the actual value of each individual item of management service rendered, or, if measured upon a proportionate basis, that part of the fee subject to variance should not exceed the quantum of value to the stockholder and the ratepayer.

It is not to the amount of the fee that objection principally ought to be made, but rather to the method of computation. Gas companies require to be efficiently managed during periods of economic depression as well as in times of general prosperity. Indeed, few will quarrel with the assertion that good management is perhaps the most essential detail to be insisted upon in a public utility, when conditions throughout industry as a whole are such that its operations are beset with difficulty. And it does not appear that the fee paid to Stone & Webster, Inc., in 1937, exceeds the value of the consideration, in view of the way in which the affairs of the company have been managed.

It was stated at the hearing by a representative of the company that it is intended, in the event that the schedule of rates and charges proposed are

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allowed and approved by the Department, to devote \$12,000 of the anticipated annual increase in net income of \$25,000, under the new rates, to a revision of certain existing inequalities in the wages paid to gas company operatives.

It does not lie within the province of this Department to give weight to such private contractual arrangements in its consideration of whether or not a given utility company is entitled to raise its rates. The sole question for our determination is whether or not the rates proposed are reasonable, and whether the increase embodied therein is necessary to enable the company to earn a fair return. If, after the Department decides that a schedule of rates involving higher charges to consumers properly may be allowed, the company allocates a part or all of the resulting rise in its income to increasing the wages of its employees, it is merely pursuing a right which it naturally possesses and of which it may avail itself in the proper exercise of its discretion.

Inasmuch as the issue of wages was raised in connection with the proceedings upon the rate schedule, it is not impertinent to comment upon that particular phase of the case. It follows logically that a company, the average wage schedule of which is lower than that paid generally to workers in the same industry, is earning more upon its capital investment in direct proportion to the amount of said wage differential, than would be the case if its payroll met the general average. Based upon comparisons between wage figures published by the Division of Statistics of the State Department of Labor and Industries, relative to

workers employed in the gas industry in Massachusetts, and actual figures representing wages paid to employees of the Haverhill Gas Light Company and engaged in the same or similar occupations, it appears that the average wage paid to workers at the Haverhill Company's plant is between 9 and 10 per cent lower than the average hourly wage paid to gas workers generally throughout the commonwealth. From this it may be deduced that if the Haverhill Gas Light Company was paying the rank and file of its employees at prevailing rates of compensation, the amount of return on par and premium, based upon present income figures, would be closer to 2 per cent than to the actual figure of 3.06 per cent.

It appears that the depreciation reserve of the Haverhill Gas Light Company is \$511,353, representing 21.7 per cent of the company's depreciable property. Prior to 1933, there was an annual charge set aside for depreciation reserves of \$45,000. During the past four years this amount has been reduced to \$35,000. This is slightly less than 1.5 per cent of the depreciable property of the company, but is warranted by the size of the total depreciation reserve. The question of setting such amounts aside for depreciation is always a source of difficulty in rate cases, due to the prevailing belief upon the part of many persons that the consumer ought not to be required to contribute through rates to the establishment of a fund of this kind when its purpose is to take care of losses through deterioration and obsolescence of the property used in serving the public.

It is my opinion that the mainte-

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nance of a substantial depreciation fund benefits both the ratepayer and the stockholder. Massachusetts never has permitted the depreciation reserve of a utility company to be capitalized for rate-making purposes. It is in the nature of an assurance to the investor that his capital will not be impaired. At the same time it tends to keep the capital structure of the company, upon which dividends are paid, at the lowest amount consistent with the public interest.

In view of prevailing conditions in the gas industry, I am of opinion that the depreciation reserve fund of the Haverhill Gas Light Company is not excessive. On the contrary, the company may be entitled to commendation for providing adequately for this purpose during years when the temptation may have existed substantially to reduce depreciation charges in order to maintain dividends at preëxisting levels.

How long a gas company, or other utility, can continue to operate at rates which so restrict its earnings that its securities become increasingly less attractive for the purpose of investment, without such rates being in fact confiscatory is a question that forcibly suggests itself to the mind under prevailing conditions. In point is the reasoning expressed by the late Justice Cardozo, while a member of the court of appeals of the state of New York, in the case of *Municipal Gas Co. v. Public Service Commission*, 225 N. Y. 89, 98, P.U.R.1919C, 364, 368, 121 N. E. 772. In this case the court said:

"The defendants argue that courts must pay some heed to the average results; that the prosperity of one year

may atone for the adversity of another; and that confiscation does not ensue unless there has been an unreasonable extension of the period of dearth. That dearth does not signify confiscation unless unreasonably prolonged, may be assumed to be true. . . . The difficult thing is to determine where the line is to be drawn. Its location will vary with the nature of the business, the exigencies of the present, the chances of the future. There is no other test than the rule of reason and fairness. . . . One cannot crowd the governing principle into any formula more definite. It will seldom be important that rates have been inadequate for a day or a week or a month. Fleeting losses may be suffered, and yet the balance sheet may show a profit. Prolong the loss, however, for a year, and you may reach and cross the danger line. It is by the average of the year that business commonly reckons its losses and its gains. On the other hand, there may be times when the average must be distributed over periods still longer."

Whether or not the "danger line" described by Justice Cardozo already has been reached or crossed by those engaged in the production and distribution of gas in this commonwealth after nearly a decade of steady losses of income, may be said to be moot, it cannot be gainsaid that the Massachusetts rule of utility regulation is definitely on trial in this case. If we discard "prudent investment" now, we invite regulation by the courts. This, without intended disrespect, I believe is bound to react against the interests of the public. To protect their own interests from confiscatory rates, utilities investors will seek here, as they

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have in other states, the substitution of other methods of rate determination with their inevitable delays and technicalities. Relief long deferred pleases nobody and may work permanent damage or injustice both to the

ratepayer and the utility companies. For these reasons and the additional reason that I believe this vital question should now be squarely faced, I dissent from the opinion and order of the majority.

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Public Service Commission
v.
Interstate Natural Gas Company,
Incorporated

[Order No. 2090, No. 2720.]

Gas, § 3 — Jurisdiction of Commission.

1. A natural gas company, if it is a public utility, is subject to the jurisdiction of the Commission so far as intrastate functions are concerned, under Art. 6 of the Constitution of 1921, even though it may not be a common carrier pipe line, p. 146.

Public utilities, § 21 — Tests of status — Corporate charter.

2. Statements in articles of incorporation, particularly when the act of incorporation occurred in another state, are not proof of the actual character of a corporation's business in the state, p. 147.

Public utilities, § 30 — Tests of status — Powers of eminent domain.

3. Avoidance of the exercise of the power of eminent domain by a corporation is by no means conclusive that it is not a public utility, although the exercise of such power might be conclusive, since such avoidance merely proves that it has been able to conduct business without the use of eminent domain, p. 147.

Public utilities, § 14 — Tests of status — Nature of business — Monopoly.

4. The fundamental and vital point as to whether a natural gas company is a public utility lies in the nature of the business which it does, and particularly as to the importance of its business to the public, linked with its inherently monopolistic character, p. 147.

Public utilities, § 49 — Wholesale company — Natural gas supply.

5. The supplying of natural gas by a pipe-line company to local distributors is as essential a public utility service as the distribution itself, p. 148.

Public utilities, § 14 — Tests of status — Character under Federal regulation.

6. If the transportation and sale of natural gas in interstate commerce by

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a gas pipe-line company is so affected with a public interest as to bring it under regulation of a Federal agency, the transportation and sale of the gas in intrastate commerce within a state is similarly so affected with a public interest as to subject it to regulation by the state Commission, p. 149.

Interstate commerce, § 37 — Jurisdiction of state Commission — Interstate gas company.

7. An interstate natural gas company is a public utility subject to the jurisdiction of the state Commission when a part of its business is purely intrastate, another part is purely interstate, while the remainder involves the crossing of state lines either before or after sale, and the major part of the business is in the state and is of great concern to the state Commission, p. 149.

[February 1, 1939.]

ORDER directed to interstate natural gas company to show cause why rates, charges, and practices as to gas service within the state should not be investigated, revised, modified, or reduced; respondent ordered to give Commission and its representatives access to property, books, and records for purpose of determining fair and reasonable rates and charges for gas transported or sold in intrastate commerce.

By the COMMISSION: This proceeding began with an order of this Commission, June 14, 1937, directing Interstate Natural Gas Company, Inc., to show cause why its rates, charges, and practices as to gas service within the state of Louisiana should not be investigated, revised, modified, and/or reduced. The company on June 21, 1937, filed an exception to the jurisdiction of this Commission; testimony was taken and a brief filed on behalf of the company, and on January 19, 1939, the case on jurisdiction was taken under advisement.

The company in its brief denies jurisdiction of this Commission on three grounds: 1, that the company is not a common carrier pipe line; 2, that it is not a public utility; and 3, that a preponderance of the gas sold by it is sold in and as a part of its interstate commerce.

[1] As to the company's being a common carrier pipe line, denial of 27 P.U.R.(N.S.)

such status is based upon Act 76 of 1920 of the legislature of Louisiana, amending Act 36 of 1906. The 1906 statute stated "that all pipe lines through which gases, oil, or other liquids are conveyed from one point in the state to another point in the state for a consideration are hereby declared to be common carriers, and are placed under the control of and subject to regulation by the Railroad Commission of Louisiana." The 1920 amending statute omitted reference to gas and mentioned only pipe lines carrying crude petroleum. Whether or not it was the intent of the legislature to remove gas pipe lines from the jurisdiction of the Railroad Commission (now Public Service Commission) and whether that could constitutionally be done, is a question the answer to which is not vital to the issue of jurisdiction, inasmuch as the latter does not depend exclusively upon the company being a common carrier pipe line.

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More important is the question whether this company is legally a public utility. If it is a public utility, it is undoubtedly subject to the jurisdiction of this Commission, so far as intrastate functions are concerned, inasmuch as Art. 6 of the Louisiana Constitution of 1921 gives this Commission jurisdiction over gas utilities.

[2-4] The company relies on various considerations in denying a public utility status. It refers to the following provision in its articles of incorporation under the laws of the state of Delaware (April 1, 1926):

"Provided that nothing herein shall be construed to authorize the corporation to transport natural gas for others as a carrier for hire, or to sell natural gas for others as a carrier for hire, or to sell natural gas except by special contract, or to constitute the corporation a common purchaser of natural gas or a public utility corporation." (Interstate Exhibit B-21)

It likewise asserts that it has never sought or exercised the power of eminent domain, does not hold itself out as ready to transport or sell natural gas to the public, and that while selling gas at wholesale to distributing agencies, it in no manner exercises any control or influence over any of its customers.

These assertions are not conclusive as to the question whether this company is or is not a public utility. Its statements in its articles of incorporation, particularly when the act of incorporation occurred in another state, are not proof of the actual character of its business in Louisiana. Although the exercise of eminent domain by this company might well be conclusive that it is a public utility, its avoidance of

the exercise of such power is by no means conclusive that it is not a public utility. It merely proves that it has been able to conduct business without the use of eminent domain.

It is of incidental interest to note that, regardless of the company's assertions that it is not a public utility, it is classed as a public utility in financial circles. Since its beginning it has been included in the public utilities volume of Moody's Manual of Investments, rather than in the Volume of Industrials. An illustration of how the facts belie the alleged purpose, it may be observed that although the descriptive matter in Moody's Manual has continued to state that the company was incorporated "to supply under contract the fuel requirements of the oil refinery of Standard Oil Company of Louisiana located at Baton Rouge, any excess quantities of gas above such requirements to be marketed along route of pipe line," the quantity sold to Standard Oil Company in the twelve months ending with June, 1938, was less than 13 per cent of the total sales, and less than 10 per cent of the total quantity of gas sold or transported.

The fundamental and vital point as to whether this company is a public utility lies in the nature of the business which it does, and particularly as to the importance of its business to the public, linked with its inherently monopolistic character.

We need not enlarge upon the obvious fact that the distribution of gas is a highly important and practically essential public service in all but the very smallest communities, and in a state like Louisiana where natural gas is available, that type of gas would

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ordinarily be used rather than manufactured gas.

[5] The small and medium-sized communities, as a practical matter, are entirely dependent on the pipe lines for a supply of gas. If there is one of the latter near-by, it may be feasible for such a community to obtain gas for local distribution; if not, and if the community is not in a gas field, no one is likely to build a pipe line to supply it alone. Hence the community has no real bargaining power; it must take the gas at the company's price or leave it, unless the state can regulate. Lack of affiliation does not produce arm's-length bargaining in any equal sense; and alleged competition with other fuels does not provide effective regulation of so distinct and convenient a natural product as natural gas. The supplying of natural gas by a pipe-line company to local distributors is as essential a public utility service as the distribution itself.

The Interstate Company denies that it exercises any control or influence over any of its customers; but its contracts indicate the attempt to direct such operations in various ways, beyond its immediate interests in having correct measurements of the total gas delivered and of the amounts sold for different uses for which different rates are charged, and, of course, in getting payment for the gas sold. For example, the following paragraph occurs in several contracts:

"The vendee agrees to use its best endeavors to secure all reasonably profitable consumers of natural gas; to introduce appliances adapted for the use of natural gas for heat and power; and the vendee further agrees that it will make such representations and so-

licitations as are reasonable and customary to induce a greater consumption of natural gas. The vendee further agrees that it will make such extension or other changes in its mains and distributing system as will be necessary to reasonably accommodate and supply the requirements of the public for gas, but the vendee shall not be obligated to make such extensions as are not commercially feasible, or where the investment will not be justified by sufficient net earnings."

Another paragraph (as, for example from the contract of September 17, 1932, with Peck Gas Co.) is as follows:

"The vendee shall use reasonable diligence to keep its system in proper repair, free from leaks and loss, and generally in good and efficient condition."

This illustrates the control exercised over the operations of vendees, even though the contract provides in a previous paragraph:

"It is understood and agreed that no allowance shall be made for leakage, it being the intention of the parties hereto that all gas delivered by the vendor to the vendee shall be paid for by the vendee to the vendor as above stipulated."

Further paragraphs which are concerned intimately with vendee operations are the following:

"The vendee shall keep proper books, records, and accounts according to approved methods so as to reflect accurately the total quantity of gas sold to all classes of consumers.

"The vendor shall have the right at all reasonable times to go upon the property of the vendee and to make such inspection and investigation of

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same as it desires, and this shall include the right to inspect the vendee's books, accounts, meters, and records for the purpose of informing itself as to the sales of gas and the condition of the vendee's plant and system, including all meters and the operation of same, for the vendor's information in the settlement of accounts between the parties hereto.

"The vendee also agrees to use its best endeavors to keep the gas in its mains throughout its entire system at as nearly a constant and uniform pressure as possible to furnish an efficient and adequate supply of natural gas throughout the town."

The Natural Gas Act of 1938, which gives the Federal Power Commission control over gas transported and sold in interstate commerce, recognizes the public utility character of natural gas pipe lines by stating that "the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." 15 USCA § 717 (a).

The Interstate Company has filed with the Federal Power Commission certain data, in considerable detail, in response to that Commission's Order No. 51 and the questionnaire authorized by that order. According to its counsel, it did so "with the full reservation of any disposition the courts might make as to the legality of this act." There appears to be no question that, assuming the Natural Gas Act to be constitutional (which the Interstate Company evidently does not it-

self deny), this company in its interstate aspects is "affected with a public interest," and is subject to the jurisdiction of the Federal Power Commission. In fact, in the one contract with a distribution agency which has been made since the Natural Gas Act became effective—the contract with the town of St. Francisville, made as of October 28, 1938 (Interstate Exhibit B-19)—the jurisdiction of the Federal Power Commission is recognized, in the following paragraph from the contract:

"Before this agreement can be effective it must be filed with the Federal Power Commission pursuant to the terms of the Natural Gas Act passed by Congress June 14, 1938, and effective June 21, 1938, and the rules and regulations of the Commission promulgated thereunder. Such filing will be made by vendor, and in the event the same does not become effective within at least thirty days, then this agreement shall become null and void and not binding on either party."

[6] If the transportation and sale of natural gas in interstate commerce by this company is so affected with a public interest as to bring it under regulation of a Federal agency, the transportation and sale of the gas in intrastate commerce in Louisiana is similarly so affected with a public interest as to subject it to regulation by the Louisiana Public Service Commission.

[7] The business of the Interstate Company includes the sale of natural gas and also the transportation of natural gas for another company, viz., United Gas Pipe Line Company. The latter company delivers gas to the In-

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terstate Company in northeast Louisiana, for transportation in the Interstate pipe line which crosses the southwest corner of Mississippi and terminates near Baton Rouge. At that point the gas that has been transported for the United Company enters the latter company's pipe line extending to New Orleans.

The gas that is sold by the Interstate Company falls into four main categories: (1) gas produced or purchased in the Monroe field in northeast Louisiana and there sold to other companies, without utilizing the main pipe line of the Interstate Company; this is claimed to be delivered without interruption to other states; (2) gas sold in Louisiana from the main pipe line before the latter crosses into Mississippi; (3) gas sold in Mississippi, from the main pipe line; (4) gas sold in Louisiana from the main pipe line after it has passed through Mississippi.

The company's answers to the Federal Power Commission's questionnaire show that in the twelve months from June 26, 1937, to June 25, 1938, inclusive, the quantity of gas transported for the account of United Gas Pipe Line Company was 22,274,127 thousand cubic feet (22,274,127,000 cubic feet). The quantity of gas delivered by the Interstate Company to its other customers in the same period (or in the case of some of its customers, in the period from June 1, 1937, to June 30, 1938, inclusive) was 44,564,493 thousand cubic feet, of which quantity 7,008,775 thousand cubic feet was sold to the United Company for New Orleans, and this is evidently included in the 22,274,127 thousand cubic feet of gas transported for the United Company.

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The quantity of gas that was sold directly in the Monroe field to other gas companies (aside from the 7,008,775 thousand cubic feet just mentioned, which was for ultimate consumption in Louisiana) and which was claimed to be for ultimate consumption outside of Louisiana, was 15,450,166 thousand cubic feet, delivered to the following companies:

	<i>M cu. ft.</i>
Arkansas-Louisiana Gas Co.	318,162
Mississippi River Fuel Corp.	5,095,411
Southern Natural Gas Co.	5,153,628
United Gas Pipe Line Co.:	
Dixie Gulf Gas Co.	1,674,544
Memphis Natural Gas Co.	3,208,420
	<hr/> 15,450,166

The quantity of gas that was disposed of, for local use in Louisiana, from the main pipe line before crossing into Mississippi, was 78,224 thousand cubic feet, as follows:

	<i>M cu. ft.</i>
United Gas Pipe Line Co. (for purging field lines, Ouachita Parish)	437
Operation of Richland Receiving Station, Alto, La.	3,305
Louisiana Power & Light Co. (For Wisner, Gilbert and Ferriday, La.)	40,955
Peck Gas Co.	4,062
Sicily Island Gas Co.	10,595
J. M. Jones Lumber Co., Ferriday ...	4,800
Town of Vidalia	12,463
Whitehall Plantation, Vidalia	1,607
	<hr/> 78,224

The quantity of gas sold in Mississippi was 223,309 thousand cubic feet and the quantity sold in Louisiana after the gas had passed through Mississippi was 21,804,019 thousand cubic feet, in addition to which was the 22,274,127 thousand cubic feet transported to Baton Rouge for the United Company and turned over to that company's Louisiana pipe line.

From the above it appears that 15,450,166 thousand cubic feet of gas

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was sold in Louisiana without passing through another state, but claimed to have been transported by the buyers beyond the state boundaries; 78,224 thousand cubic feet was disposed of for local use in Louisiana without crossing the state line (3,305 thousand cubic feet of which was for operation of the Richland receiving station, presumably by the Interstate Company itself, leaving 74,919 thousand cubic feet sold to others); 223,309 thousand cubic feet was sold in Mississippi, in purely interstate commerce; 21,804,019 thousand cubic feet was sold by the Interstate Company and 22,274,127 thousand cubic feet (less losses) by the United Company in Louisiana after having passed through Mississippi. Thus a part of the business of the Interstate Company is purely intrastate, another part is purely interstate, while the remainder involves the crossing of state lines, either before or after sale; and the major part of the business is in Louisiana and is of great concern to this Commission.

It should be noted further that of the 74,919 thousand cubic feet sold in Louisiana for local use, without state lines being crossed, 68,075 thousand cubic feet was designated as for ultimate public consumption (being the total of the amounts sold to Louisiana Power and Light Co., Peck Gas Co., Sicily Island Gas Co. and Vidalia). Of the 21,804,019 thousand cubic feet

sold in Louisiana after passage through Mississippi, the major portion was for industrial use, but the following was designated as for ultimate public consumption:

	<i>M cu. ft.</i>
Town of Jackson	11,107
Town of Zachary	2,978
Baton Rouge Electric Company	868,429
Suburban Public Service, Inc.	14,004
Village of Gonzales	7,012
Reserve Public Utilities Corporation ..	12,127
Norco Gas & Fuel Company	12,883
LaPlace Gas & Fuel Company	5,003
	<hr/> 933,543

In addition, 8,558,553 thousand cubic feet was sold to the Louisiana Steam Generating Corporation, at Baton Rouge, as fuel for the generation of steam and electric energy, much of the latter being for ultimate public consumption; and of the 22,274,127 thousand cubic feet transported to Baton Rouge for the United Company, a large part—presumably much the major part—was for ultimate public consumption.

In view of all the foregoing, we conclude that Interstate Natural Gas Company, Inc., is a public utility subject to the jurisdiction of this Commission. It is, therefore,

Ordered, that Interstate Natural Gas Company, Inc., give this Commission and its representatives access to its property, books, and records, for the purpose of determining fair and reasonable rates and charges for gas transported or sold in intrastate commerce in Louisiana.

Re The Tennessee Electric Power Company

[Docket No. 2225.]

Payment, § 6 — Powers of Commission — Waiver of discount or penalty — Managerial or regulatory questions.

1. The collection or waiver of a discount or a penalty is not a purely managerial question over which the Commission may not exercise authority in the absence of a general rule on the subject by the Commission, p. 156.

Discrimination, § 195 — Waiver of discount or penalty.

2. A public utility company which, in its relations with certain customers, designedly and regularly and over a long period of time waives the explicit provisions of its rate schedules, by collecting net amounts rather than gross amounts due on delinquent bills, is guilty of unlawful discrimination, p. 156.

Payment, § 53 — Collection of gross bills — Necessity of rule.

3. No general rule by the Commission is necessary to require a public utility company to collect gross bills from delinquent customers when the rate schedules provide that the gross rates will apply on delinquent accounts, p. 156.

Discrimination, § 198 — Extension of credit — Denial of service.

4. A public utility company which permits bills of certain customers to accrue over a long period of time without exercising its privilege of discontinuing service, while requiring other customers to pay promptly, is guilty of unlawful discrimination, p. 160.

Discrimination, § 23 — Rebate — Payment of excessive price to customer — Advertising.

5. An electric company which purchases advertising space from a newspaper customer at a rate far in excess of that which it should pay and far in excess of the rates paid by other large advertisers is guilty of unlawful discrimination since the excess payment constitutes a rebate, p. 164.

Discrimination, § 23 — Indirect rebate — Payment to customer's attorney.

6. An electric company which, under the guise of paying for legal services which are not actually received, makes payments to the attorney for a newspaper customer, the payments being used by the attorney to purchase stock of the newspaper company (in need of financial support), is guilty of unlawful discrimination by rebating, p. 166.

Procedure, § 21 — Notice and hearing — Investigation of discrimination.

Discussion of the lack of right of a public utility company to an opportunity to be heard before the Commission reveals to a district attorney, for recovery of penalties, information gathered by members of the Commission's staff relating to discrimination by the utility, p. 154.

RE THE TENNESSEE ELECTRIC POWER CO.

Discrimination, § 1 — Public policy — Regulatory history.

Discussion of the public policy of prohibiting discrimination by public service corporations and of the fight by regulatory authorities against discriminatory practices, p. 155.

[February 10, 1939.]

CITATION of electric company to appear and show cause why Commission should not prefer an information to a district attorney relating to alleged discriminatory practices; ordered that certificate issue to district attorney.

JOURLMON, Commissioner: As the result of certain information which reached the Railroad and Public Utilities Commission through the medium of wide circulation in the press of the state, it became incumbent upon the Commission in the month of October, 1938, to order a complete investigation of relations between The Tennessee Electric Power Company and two of its customers in Chattanooga, Tennessee. These customers were the Home Stores, Inc., a grocery chain, and the Chattanooga Free Press an affiliated daily newspaper. The investigation began on October 5, 1938, and was completed on November 10, 1938, at which time the auditors of the Commission who had conducted the investigation rendered a report setting forth evidences of credit and discount arrangements and other practices which, unless justified by circumstances unknown to the Commission, constituted a grave discrimination or series of discriminations in favor of the Home Stores and the Free Press.

Under the statutes of the state of Tennessee it is provided that penalties prescribed in the statute for the regulation of rail carriers in this state, which was Chap. 10 of the Acts of 1897, "shall be and remain in full force and effect, and shall in every

case apply to any public utility within this statute in the same manner and to the same extent as they are made applicable to and imposed on railroad and transportation companies under earlier sections of this chapter." Code of Tennessee, § 5455. It is here clearly the intention of the legislature to make the following provision of the Code applicable to any corporation or other person engaged in public utility services of an intrastate nature: "Section 5420. Any such corporation that shall be guilty of extortion or unjust discrimination, or of giving to any person or locality, or to any description of traffic an undue or unreasonable preference or advantage, shall be fined in any sum not less than \$500 nor more than \$2,000."

And the method for recovering such penalties was provided in the statute as follows: "Section 5422. It shall be the duty of the district attorneys to bring suit in the name of the state on the relation of the Commissioners, in any court having jurisdiction thereof, to recover any penalty imposed by the provisions of this article." Furthermore, a similar duty to enforce the laws of the state regulating public utilities and other similar corporations was imposed upon the Commissioners themselves, not only by the

TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

spirit of the Public Utility Act but also through the explicit provisions of § 5438 of the Code.

Faced with the duties and obligations imposed by these various enactments and by the information gathered by the members of the Commission's staff who had made a careful and conscientious examination of the company's records, the Commission found it necessary to decide the proper procedure to be taken under the law.

There is nothing in the statutes which required the Commission to give the company an opportunity to be heard before the Commission made relation of the facts revealed to a district attorney for recovery of the penalties. Had it chosen to do so, it could at once have placed in the hands of the proper district attorney a full recitation of the facts. But the Commission was loath to proceed without granting the company ample opportunity to show publicly any reasons or justification which might exist, unknown to the Commission, for the practices pursued by the company. In a spirit of fairness, therefore, the Commission by order called upon the company to appear and show cause why the practices which had been discovered should not be deemed to be discriminatory and wholly unjustifiable. The Commission was and is satisfied that the company was thus given full opportunity to present any facts which would serve to exculpate it from any blame which might attach to the acts committed. We repeat, for the sake of emphasis, that it was not obligatory upon the Commission to grant the company such an opportunity and that the Commission in issuing its show-cause order was actuated sim-

ply by considerations of equity and justice.

But the respondent company misinterpreted the attitude of the Commission when it came to defend the show-cause order issued. At the hearing, which was held on November 30, 1938, the company declined to make any defense whatever other than a perfunctory answer to the citation. In so doing, it was wholly within its rights. It might have done this for many valid reasons, including the perfectly legitimate one that it preferred not to make known the defense upon which it relied until called upon to appear before some court having jurisdiction to assess the statutory penalties. The company knew that the Commission did not claim such jurisdiction. However, the company did not elect to offer such a reason for refusing to present its case. Instead, it averred frequently that the Commission had prejudged the issues and had already made up its mind as to its future course. This is palpably and patently a misstatement, since, if the Commission had made up its mind, it could readily have waived a hearing, presented the facts to a district attorney, and opened the entire procedure through the process of a court. It is true that it is difficult to conceive what justification could have existed for the acts in question, but the Commission could not rashly conclude *ex parte* that no such justification existed. Here the Commission must reiterate that if the company had appeared and shown any lawful reason for the existence of these practices, no action would have to be taken by the Commission. Furthermore, the company has not even yet foreclosed its opportunity to show this Commis-

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sion that the acts are wholly lawful, notwithstanding the fact that the attitude of the respondent, which bordered upon the contemptuous during the hearing, would have been met by many Commissions with determined resistance. And so, if the company should reopen the matter or should advise the Commission of circumstances warranting the dismissal of the case, the Commission would assuredly cease any proceedings hereunder.

The citation of The Tennessee Electric Power Company in this case charges 917 separate counts of discrimination by the respondent company. These various acts fall into five or six different classifications.

Count 1 charges an unlawful preference to the Chattanooga Free Press by the payment to it of \$10,000 through its attorney, one Silas Williams.

Count 2 charges that the power company paid amounts far in excess of regular rates for advertising space in the Chattanooga Free Press, which constituted preferential treatment for this particular customer of the utility.

Counts 3 to 24, inclusive, charge that the power company sold electric energy to the Chattanooga Free Press from the month of September, 1936, through the month of June, 1938, giving the newspaper credit of a long and unusual nature for many months, and, when after many months of delinquency the bills were finally paid, allowing the newspaper to pay less than the amounts called for by the duly filed schedule of rates. The facts with reference to each separate month in which this practice was followed are recited in separate counts.

Counts 25 to 749, inclusive, relate to monthly bills from October, 1936, through August, 1938, for electric energy sold by the company to the Home Stores, Inc., at various addresses, more than forty in all, in Chattanooga. Long and unusual credit was granted to the Home Stores organization on all these monthly bills, and they remained unpaid as of September 30, 1938, the end of the period of examination by the auditors of the Commission.

Counts 750 to 917, inclusive, relate to other monthly bills for electricity sold to the various Home Stores from July, 1936, through August, 1938. On all these bills it is charged that long and unusual credit had been allowed to the Home Stores organization and in addition, that when the bills were finally collected, payments were allowed by the company in amounts lower than those called for by the regular schedules of rates on file with the Railroad and Public Utilities Commission.

If these charges are true, there is here presented to the Commission an almost unprecedented record of favors granted to certain customers. If these acts are true, the company has been following a course which has not only been prohibited by statutes but has also been universally condemned by Commissions and courts as one of the gravest practices that can be committed by a corporation devoted to the public service. Public utility companies enjoy sweeping privileges and immunities bestowed upon them by the franchises under which they operate, and it is an essential corollary of this sovereign grant of monopolistic rights that the public should demand and re-

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ceive in return absolute impartiality of treatment for all customers. Those who deal with a public service corporation must be treated alike; favors may not be extended to some which are denied to others similarly situated. Such impartiality is of the essence of public services.

Since the middle of the last century the unparalleled increase in the scope of public utility operations has made the problem of preferential treatment of customers an acutely distressing one. The acts of favoritism which railroads were at one time accustomed to practice toward favored shippers, and in some instances toward entire localities, through rate manipulations, brought on a popular revolt and led to the establishment of the American institution of regulatory Commissions. The common-law denunciation of preferential treatment became inadequate as an instrument of social control, and in practically every state laws were passed delineating the rules which should control the rendering of public services by transportation companies and other carriers. These statutes likewise provided serious penalties to be imposed upon those companies which refused to grant equality of services and charges to all their patrons alike.

In 1893 Interstate Commerce Commissioner Knapp said of the discriminatory practices indulged in by the railroads: "That one man should have an arbitrary advantage over his fellows, in respect of a common necessity, is repugnant to every notion of equality and offends the rudest conception of justice. Of what avail are industry, enterprise, integrity, or any of the qualities which should lead to success,

if the less capable and less honest competitor can control the market by bargaining with the railroads for reduced rates and special facilities? When this indispensable service is performed on varying and unequal terms, when secret concessions are made to one or more rivals in a given line of business, those from whom higher charges are exacted are placed at a serious and often fatal disadvantage. In such a case the race is not to the swift nor the battle to the strong, but to the one whose freight rates are the lowest."

In 1910 the Interstate Commerce Commission declared: "The fight against discrimination is by no means won. Those practices still remaining are more insidious and more difficult of extirpation than open rebating, by reason of the fact that they are hidden in contractual arrangements entirely legal except for the effect produced."

During the present generation social control has been extended from the railroads to other public utilities. But in spite of all efforts to prohibit it, there has persisted a continuing practice of favoring various patrons. In many cases this has been accomplished, not in connection with the direct sale of utility services, but in supplementary or collateral transactions the terms of which have been susceptible of subtle adjustment so as to afford special advantages to the favored few. These considerations merely serve to accentuate the gravity of the charges against The Tennessee Electric Power Company in the present citation.

[1-3] In the first place, we consider the legal effect of the collection of bills for electricity at less than the published rates. Reduced to the sim-

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plest terms, the charges here are that the power company adopted a practice in its dealings with the Home Stores and the Free Press of collecting bills which were long past due and rebating to these customers the established discounts or penalties, which amounted to 5 per cent on each account stated. In other words, the power company collected the net amounts rather than the gross amounts due on all such delinquent bills. This was the charge made by the Commission on counts 3 to 24, inclusive, having to do with the delinquent bills of the Free Press, and counts 750 to 917, inclusive, having to do with the Home Stores. The company in its formal answer made no denial of these charges, but on the contrary specifically admitted that this practice had been followed. Indeed, the answer goes much further than this and admits that, in addition to those accounts which the citation charged had been collected upon the basis of the net amounts due, the company has now collected all past due accounts, which include those listed in counts 25 to 749, inclusive, and that discounts have also been allowed on all these latter bills. Accordingly, it follows that if this particular act is an unlawful discrimination, the company has openly admitted facts which would warrant a conviction upon all of the citation counts except the first two; and these facts are no longer susceptible of denial, either in this or in any subsequent hearing. See *Stamper v. Venable* (1906) 117 Tenn. 557, 97 S. W. 812; *Ault v. Dustin* (1898) 100 Tenn. 366, 45 S. W. 981; *Stearns Coal & Lumber Co. v. Jamestown R. Co.* (1918) 141 Tenn. 203, 208 S. W. 334; *Sartain v. Dixie Coal*

& Iron Co. (1924) 150 Tenn. 633, 266 S. W. 313.

But the company denies that this practice is in any way discriminatory or unlawful. There is accordingly here presented a pure question of law.

The respondent insists that collection of the 5 per cent penalty for delinquency, or allowance of the 5 per cent discount for prompt payment, is a wholly optional matter to be left to the free and untrammelled discretion of the company itself. Respondent suggested during the hearing on the citation that the Commission should adopt a rule requiring it to exact the gross bill from every person who becomes delinquent, and insisted that until such a regulation is promulgated by the Commission it rests unqualifiedly within the discretion of the company to collect either gross or net bill, as it sees fit in every instance. We well know that the genius of man in inventing schemes of evasion to circumvent the law is both versatile and indefatigable, nor can the Commission be expected to set up a regulation so comprehensive as to thwart every device or artifice at the command of utility corporations. If such complete discretion over discounts and penalties were lodged with the company, a more fruitful opportunity for discrimination could hardly be imagined. For one man the 5 per cent penalty provision would be virtually nonexistent, while for his neighbor it would be a constant and ever-present hazard, always held over his head and always collected. If both these parties were habitually slow pay, it would amount to a permanent 5 per cent differential in their electric bills, an inequality which would be burdensome and intolerable to the second

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party. From still a different angle, the failure to collect from large numbers of delinquent customers and the consequent practical nullification of the discount provision would result in a serious discrimination against those who promptly pay their bills, many of them forced to do so through fear of the penalty, even at great hardship to themselves.

We are not inclined, therefore, to accept the view advanced by the respondent that the collection or waiver of a discount or a penalty is a purely managerial question over which this Commission may not exercise authority in the absence of a general rule on the subject by the Commission. We feel that a sound interpretation of the law and a careful regard for the public welfare require the adoption of a view similar to that expressed in another jurisdiction, where the whole subject of discounts and penalties was recently under review. In that case, regulatory authority was extended over discounts and penalties in accordance with the following doctrine:

"A problem which is purely managerial, as we understand the term, is one which affects only the manner of carrying on the company's business and the effect of which is confined solely to the company. The penalty or the discount affects the customer in one way or another, either by reason of the customer being delinquent, or if not delinquent, then . . . by his being required to partially pay the expense of collection of delinquent bills if the penalty is not sufficient to defray that cost; by paying all of such expense if there is no penalty, or by benefiting at the delinquent customers' expense if the penalty should show a

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profit. . . . We are of the opinion that the making of a charge in the nature of a penalty or a forfeited discount is not an operation of the company which can be properly classified as being purely managerial." Public Service Commission v. Kansas City Power & Light Co. (Mo. 1933) 2 P.U.R.(N.S.) 391, 394.

Even where it was held, in a frequently cited court case, that the amount of the discount, or the length of the discount period, is primarily a matter within the discretion of the company management and not of direct concern to the regulatory Commission, it was nevertheless pointed out that "what allowance the company will make for prompt payment should be universally applied, so as not to create discrimination. . . ." United Fuel Gas Co. v. Kentucky R. Commission (1925) 13 F. (2d) 510, 524.

On the other hand, it is no doubt true that consumers of electricity may occasionally have legitimate excuses wherein a relaxing of the strict rule may be legally justified. The Commission recognizes that the power company, in its relations with its patrons, is dealing in a field where it must constantly reckon with the factor of human frailty. If the issue were presented as to whether this Commission should pronounce unlawfully discriminatory every failure to collect the penalty from delinquent customers, our decision would necessarily have to be tempered by the rule of reason. Without further investigation, the Commission does not hazard a prediction as to what its ruling would be. Treating this question as moot and unadjudicated undoubtedly leaves the 5 per cent penalty subject to the

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danger of abuse. But until the problem can be further investigated, the Commission makes no general rule; it simply observes that the company should at all times exercise great care in departing from any charge which is prescribed specifically in the schedule of rates. In other words, the company should always be able to point out readily the justification for the discrimination which undoubtedly follows whenever there is any departure from the precise language of a prescribed rate.

However, this is not a case involving an occasional and discretionary and compassionate abatement of the fixed terms of rate schedules. It is a case in which the power company, in its relations with two customers, has designedly and regularly and over a long period of time waived the explicit provisions of rate schedules.

The Home Stores, Inc., is a commercial enterprise, and the rates applicable to this class of business are commercial rates. Rate Schedules D1 and U2 were designed by the company for the use of commercial establishments. The only question before the Commission as to discriminations in favor of this customer, the Home Stores; must be adjudicated upon the reasonable interpretation of the rates applicable. Schedules D1 and U2 do not state that the company "may" collect gross bills for delinquent accounts. They are not permissive rates. On the contrary, the prompt payment paragraph in each schedule states that the gross rates "will apply" on delinquent accounts. "The above are net rates—if bills are not paid within ten days from date thereof, the gross rates will apply which will be 5 per cent in excess of the above net rates." In other

words, the very language of this provision eliminates the discretion which the company contends it possesses. Whatever may be true of the leniency occasionally due to domestic customers under exceptional circumstances, there is no necessity or reason for having such flexibility in a commercial rate schedule. Commercial establishments, such as the Home Stores, thoroughly understand the discount system which has developed in the United States. This system is so well recognized that credit bureaus like Dun and Bradstreet use the word "discounts" in place of the word "prompt" to denote the firm which pays its accounts within ten days. No general rule by the Commission is necessary to require the power company to collect gross bills from delinquent commercial patrons. The rate schedules filed by the company itself already constitute such a general rule.

The situation with reference to the current sold to the Chattanooga Free Press is essentially the same as that involving the Home Stores. The Free Press is properly billed as an industrial power user under Rate A—Metered Power Wholesale. The discount provision of this rate schedule is similar to that in the commercial rates applicable to the Home Stores accounts. The provision reads: "Prompt payment discount: 5 per cent if paid within ten days from date of bill." There is here no language rendering collection of the gross bill discretionary with the company. On the contrary, the schedule imposes two distinct rates, one of which is unqualifiedly the proper rate before delinquency, the other of which is just as unqualifiedly the proper rate after delinquency. There can be no

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more justification for collecting the net bill after delinquency than there would be for charging the gross bill before delinquency. In either case, a discrimination would be practiced.

This conclusion of the Commission is wholly in accord with sound and widespread rulings on this subject by Commissions and courts throughout the United States. "It is a well-established and universally recognized principle of rate making and of regulation that all customers, within their proper classifications, shall receive the same treatment, pay the same unit prices for electricity consumed, and be given equal opportunity to earn discounts." Department of Public Service v. Puget Sound Power & Light Co. (Wash. 1937) 20 P.U.R.(N.S.) 456, 466.

Similarly, a telephone company, which had a filed rate providing for a net bill before and a gross bill after a specified day in each month, was held guilty of unlawful discrimination in accepting from one subscriber payments of net amounts after the specified day. Re Theresa Union Teleph. Co. (Wis. 1926) P.U.R.1927A, 687.

In Western U. Teleg. Co. v. Call Publishing Co. (1901) 181 U. S. 92, 45 L. ed. 765, 21 S. Ct. 561, the telegraph company over an extended period had charged the Lincoln Daily Call \$5 per day for Associated Press dispatches, while it had charged the Nebraska State Journal, another newspaper in the same city, only \$1.50 for the same, similar, and contemporaneous telegraphic service. The Call Publishing Company brought action and secured judgment for excessive charges against Western Union, on the theory of unjust discrimination, 27 P.U.R.(N.S.)

and the judgment was affirmed by both the Nebraska supreme court and the United States Supreme Court. Mr. Justice Brewer, in delivering the opinion of the United States Supreme Court in this case, *supra*, at p. 100 of 181 U. S. declared that the principle of equality, binding upon both interstate and intrastate common carriers, forbids "any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination."

Cf. also Armour Packing Co. v. Edison Electric Illuminating Co. (1906) 115 App. Div. 51, 100 N. Y. Supp. 605; Texas Power & Light Co. v. Hilltop Baking Co. (Tex. Civ. App. 1935) 78 S. W. (2d) 718.

It therefore follows, and the Commission accordingly finds, that by its own admission of facts The Tennessee Electric Power Company is guilty of unlawful discrimination in its failure to collect the gross bill due on each separate count of the citation from 3 to 917, inclusive.

[4] In the second place, it is alleged and found in the citation that The Tennessee Electric Power Company practiced a discrimination in extending to the Home Stores and the Chattanooga Free Press long and unusual terms of credit. The company has made no denial of the basic facts, but here likewise contends that under the law it has the right to determine to whom and under what circumstances credit will be extended, partially or impartially as the case may be. Consequently, upon this phase of the case, the supporting facts and figures taken

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by the Commission's auditors from the company's books must be accepted as true, and after such a pleading on the part of the company it will surely be estopped henceforth from denying the truth of the underlying facts. *Stamper v. Venable, supra*, and other cases cited therewith above.

These facts, coupled with those gleaned from the testimony of employees of the power company and of the Free Press before the Joint Committee of Congress on the Investigation of the Tennessee Valley Authority, make it possible to reconstruct a composite picture of the relationship between the power company, the Home Stores, Inc., and the Chattanooga Free Press.

By the summer of 1936 there had developed in Chattanooga a strong public sentiment in favor of a municipal power system. Such a system, receiving power from the TVA, would provide substantially lower electric rates than those of The Tennessee Electric Power Company. The private utility, under these circumstances, desired a publicity organ through which it might voice its position in the controversy. The Chattanooga Free Press was at this time a semiweekly free paper, little more than a trade paper for the Home Stores. But in the summer of 1936 this little trade sheet became an afternoon daily and has since developed into a news organ of large circulation and considerable influence. On cross-examination during the hearing of this case, the attorney for the power company disclosed the fact that the Free Press is a newspaper "favorable to the maintenance of the service of The Tennessee Electric Power Company." This characterization describes the editorial

policy of the newspaper with remarkable restraint, for it has acquired a wide reputation since 1936 for its crusade against the public power program and in favor of the private utility.

These circumstances are inextricably interwoven with the series of discriminations which this Commission has charged. Immediately after the Free Press became a daily, the various Home Stores began to become delinquent in their electric bills. Up to this time the grocery organization had paid its bills with regularity. But by November 1, 1936, every single member of the Home Stores chain, including the Free Press, had become delinquent. This could hardly have been a mere coincidence. The Commission can only conjecture as to the vicissitudes and crises which must have arisen during the arduous course of creating a metropolitan newspaper, but the ensuing history clearly indicates that various financial difficulties had to be met from time to time and that additional funds had to be made available to keep the presses in motion. Month after month the Home Stores and the Free Press continued to use electricity, and month after month the new accruals added to the burden of delinquency. Every month the forty-two Home Stores were running up bills aggregating about \$600, the combination bakery and creamery operated by the organization was running up a bill in the neighborhood of \$350, and the Free Press, at this time having its electricity charged on the Home Stores account, was running up a bill of approximately \$450. Altogether, each month the power company was delivering to these customers about \$1,400 worth of electricity for

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which it was not exacting payment. The utility did not need to suffer this imposition, shorn and destitute of any business redress to protect its interests. The company at any time could have relied upon the privilege of discontinuing service, expressly set up in its rates, if it had chosen to do so. Yet it permitted these bills to accrue without one cent being paid upon them for a period of approximately fifteen months. By January 1, 1938, the affiliated companies had been allowed to accrue total electric bills of approximately \$20,000.

From the above recitation of facts, it can be seen that this is no normal credit arrangement such as might occur in the usual run of business of a utility corporation. There is here no scintilla of resemblance to the ordinary credit problem of whether a prospective customer has sufficient financial standing to warrant the installation of a meter without requiring a deposit for the protection of the company. The utility would have needed a deposit of \$20,000 or more to protect it from the sort of credit which was here granted. This fact reduces to an absurdity the suggestion that the transactions in this case were merely a "credit arrangement." Concerning the ultimate object of the company and its two favored customers in this situation, the Commission cannot afford to hazard a guess. That the parties would have been content to let this arrangement continue until the Free Press had become a successful and soundly financed business enterprise, which, at long last, would then have paid its bill, is the charitable view. On the other hand, the power company had made an excellent start on the road toward letting

these accruals become barred by the statute of limitations, and the facts would amply support the inference that this was the end toward which the entire sequence of events was inevitably heading. Except for this inference, drawn from known facts, we can never know what ultimately might have occurred, because in January, 1938, the proposal in Congress to investigate the Tennessee Valley Authority and to probe the propaganda efforts of the electric utilities in the areas served by the Authority interrupted the orderly procedure of the program which was already in full swing. At least, in this same month the Home Stores began to pay recent and current bills, and the Free Press stopped charging its bills on the Home Stores account.

When, in January, 1938, the newspaper electric bill was finally set up in its own name, it amounted to an accrued delinquency of \$6,574.85. By a strange coincidence this bill was paid in full on the day following the adoption by the House of Representatives of the resolution calling for an investigation of power company efforts to prohibit municipalities from acquiring distribution systems. This resolution was passed on March 30, 1938; the bill was paid on March 31, 1938. But the Home Stores continued to owe long delinquent bills aggregating approximately \$13,000.

This is the type of credit which the respondent now insists is wholly lawful, nondiscriminatory, and discretionary with the company. Possibly the utility, in charting its course, thought it could rely upon the case of *Vaught v. East Tennessee Teleph. Co.* (1910) 123 Tenn. 318, 130 S. W. 1050, 31 L.R.A.(N.S.) 315.

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In the Vaught Case, the supreme court of Tennessee adopted the rule established in *Yancey v. Batesville Teleph. Co.* (1907) 81 Ark. 486, 491, 99 S. W. 679, 11 Ann. Cas. 135, to the effect that a telephone company may require charges for services to be paid in advance or may extend credit for such charges to persons it may deem deserving, without being guilty of unlawful discrimination among its patrons, and that discretion in the matter is within the province of the company. But the Vaught Case involved a deposit of three months' rental in advance from a prospective patron before installation of a telephone. In other words, the issue was a reasonable exaction of advance payment from a prospective customer, and not an unreasonable waiver of the collection of long-accrued charges from an existing customer as in the present cause.

If the Vaught rule were extended to cover situations similar to that of the instant case, there would be no limit to the discriminations which utility companies might practice, and regulatory Commissions would be powerless to prevent the evils which antidiscrimination statutes are designed to suppress. Furthermore, the Vaught Case was decided almost a decade before the passage by the Tennessee legislature of the Public Utility Act of 1919, specifically denouncing, and delegating to this Commission the duty to prevent, unreasonable preferences and unjust discriminations by utility companies. The Vaught rule clearly is not applicable to the case at bar.

Turning now to cases which are applicable to the facts under consideration, the Commission must follow the rules established in such decisions as

Hocking Valley R. Co. v. United States (1914) 127 C. C. A. 285, 210 Fed. 735, petition for writ of certiorari denied by United States Supreme Court (1914) 234 U. S. 757, 58 L. ed. 1579, 34 S. Ct. 675; *Re City Water Plant* (Ark. 1920) P.U.R.1921A, 634; *Re Farmers Fountain Teleph. Co.* (Ill.) P.U.R.1924E, 197; *Benjamin v. Great Northern Utilities Co.* (Mont. 1923) P.U.R.1924B, 705; *Re Hyrum City Municipal Electric Plant* (Utah) P.U.R.1924D, 525.

In the *City Water Plant Case*, a later suit in the same state from which Tennessee had derived the Vaught rule, the Arkansas Corporation Commission found that various patrons of the Fayetteville city water plant were several months in arrears in the payment of their water bills and that one user, at least, had gone fourteen months without paying his bill. The Commission declared (P.U.R.1921A, at p. 635):

"The rules on file with this Commission, and the general policy of the Commission, is to require prompt payment of all outstanding bills owing to a utility. It is necessary, in order to prevent discrimination, that these rules must be rigidly enforced. The rules filed are as much a part of the rates as the amounts fixed therein. To allow one customer to violate the rules by not paying his bill promptly is as much discrimination against the other consumers as to give to one customer a lower rate than that fixed by the Commission."

The *Hocking Valley Case* is a leading authority upon the subject of discrimination by railroads and public utilities through extension of credit. The United States circuit court of ap-

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peals for the sixth circuit here interpreted the naked word "discrimination," as used in the amended Elkins Act of 1903 without any express limitation as to unreasonable, undue, or unjust prejudice or advantage. Circuit Judge Denison, in delivering the opinion of the court, explained (210 Fed. at p. 743):

"Our conclusion here is not affected by these queries as to just how far the thought of unreasonableness still inheres in the proper definition of 'discrimination' under the Elkins Act. In the instant case, the four months' credit given to one favored shipper, and then extended for longer periods, was a material and substantial distinction. It was of that character which might permit the favored shipper to continue in business and drive all others out of business. It is obvious that if continued it might rapidly accumulate into a very large sum. It cannot be thought so free from objectionable quality as not to be clearly within that general prohibition from which the express modification has been dropped."

We have reached the conclusion that it is not the law in Tennessee that utilities may engage in credit arrangements with their customers varying in such a wide disparity as to give certain favored customers extensions of month after month and running into years, while requiring others to pay promptly on pain of having their service discontinued after a month of delinquency. This is not the law now in Tennessee, and we do not believe it ever was the law. The present case reveals just what a telling preference and advantage may be wrought through a long-term credit arrangement. The Commission accordingly

finds that in each of the counts in which it was found that extraordinarily long terms of credit after delinquency were allowed by respondent, either to members of the Home Stores chain or to the Chattanooga Free Press, there was an unjustified and unlawful discrimination. These acts were of a continuing nature, and the company was guilty of violating the statute prohibiting such discriminations on all counts from numbers 3 to 917, inclusive.

[5] There remain for our consideration the first and second counts of the citation. The second count pertains to the method by which the advertising account of The Tennessee Electric Power Company with the Chattanooga Free Press was used to provide money with which the newspaper might pay its accrued electric bills. During the months that The Tennessee Electric Power Company was delivering electricity to the Free Press without collecting for it, the utility was purchasing advertising space in the newspaper and paying promptly to the minute for it. No study has been made by the Commission as to what part of this advertising space may have been improvidently or extravagantly purchased. It is indicated that the amount of space was considerably in excess of that used in any other newspaper in the community, and probably in any other newspaper in the state. But the Commission did not base its charge of discrimination upon any real or fancied imprudence of the investment in such space. The Commission simply found that The Tennessee Electric Power Company was paying for its advertising space a rate far in excess of that

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which it should have been paying if it had genuinely and in good faith exercised the bargaining power which it enjoyed as a large advertiser. In many instances the company was paying a rate more than double that of other large advertisers, a disparity so great as to give rise to the presumption that the utility did not deal with the newspaper at arm's length.

In many a rate case Public Service Commissions have excluded from operating expenses such excessive advertising expenditures as were incurred by this respondent and passed on to rate payers. Re Indianapolis Water Co. (Ind. 1924) P.U.R.1925C, 431, 441; Re Union Electric Light & P. Co. (Mo. 1937) 17 P.U.R.(N.S.) 337, 388; Re New York Teleph. Co. (N. Y.) P.U.R.1923B, 545, 623; Re Lone Star Gas Co. (Okla.) P.U.R. 1933C, 1, 53.

Commissions are usually clothed with broad statutory powers to investigate carriers and public utilities, to prevent evasions of Commission orders, and to detect in formal compliances or assignments of expenses by companies possible concealments of forbidden practices; and the courts will not interfere with the reasonable exercise of these powers. See *Smith v. Interstate Commerce Commission* (1917) 245 U. S. 33, 62 L. ed. 135, 38 S. Ct. 30. Moreover, the United States Supreme Court has declared that it will not sit as a board of revision to review the actions of Public Utility Commissions, so long as constitutional limitations are not transgressed. *Los Angeles Gas & E. Corp. v. California R. Commission*, 289 U. S. 287, 304, 77 L. ed. 1180, 1192, P.U.R.1933C, 229, 53 S. Ct. 637.

The Missouri Public Service Commission, in the *Union Electric Light Case* just cited above, advanced compelling logic in excluding from operating expenses an advertising item of \$11,747.22 (17 P.U.R.(N.S.) at p. 388):

"The Commission accountants eliminated the Union Company's proportion of expenditures for advertising dealing with the question of the public ownership of utilities. The company contends that this expenditure is justified because it was made to protect its property, and that it is in the interest of its customers because its purpose was to prevent loss of territory which may eventually increase the cost of service. We cannot agree with this point of view. There is no proof of any disadvantage to the consumers if the utility serving these consumers is a publicly owned rather than a privately owned utility. The purpose of this advertising is, primarily, to protect the investors, and, therefore, should be borne by the investors. We shall, therefore, not reinstate this item."

The Oklahoma Corporation Commission, in the *Lone Star Case* previously cited, disallowed half of an advertising expenditure, with the significant explanation (P.U.R.1933C, at p. 53):

"The Commission is of the opinion that a part of the advertising expense claimed by the respondent herein, is due to excessive and unnecessary advertising in towns served by respondent company, for the purpose of preventing unfavorable editorial criticism on the high rates charged by the company.

"In view of the foregoing facts and decisions, we believe we are justified

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in cutting in half the sum of \$55,065.92 set up on the books of the company for the year ending July 31, 1932, as advertising expense, and allowing for that period the sum of \$27,532.96."

The present proceeding, of course, is not a rate case, as were the ones just cited; it is a discrimination case. Nevertheless, the treatment of advertising items in these rate cases plainly indicates the guiding principle for this Commission to follow in the present situation.

The Commission has averred that the method of allowing itself to be overcharged for advertising space was but a device of the utility company through which preferential rebates were bestowed upon the Chattanooga Free Press. In this instance the company was not dealing with a total outsider, but with one of its own customers, and it is not possible for the Commission to mark any line of cleavage where the customer ceases to be such and becomes a third party, with whom the obligation to deal impartially, as relates to the many other patrons of the company, ceases to exist. A favorite method of preferring one customer over another, ever since direct and simple rebates and subsidies became unlawful, has been to employ some roundabout scheme, camouflaged by a background of innocent-looking contractual relations, by means of which some persons are given advantages over their competing neighbors. A preferential result may be reached by explicit agreement, by tacit consent, by secret rebate, by unearned discounts, by the allowance of commissions, by the payment of overcharges, by the allowance of unfounded claims

or counterclaims, or by almost any other artifice which ingenuity can devise. But in whatever guise it appears, every such device works an indefensible injury to private rights and is a gross violation of public duty. The Commission finds, accordingly, that the payment by The Tennessee Electric Power Company for advertising space in the Chattanooga Free Press at a rate in excess of \$1.11 per inch, while other large advertisers were purchasing space at rates varying from 28 to 70 cents per inch, was simply a devious artifice, similar to many others practiced by carrier and utility corporations in order to favor certain shippers and consumers, and hence an unlawful rebate. On the present hearing, it is not necessary for the Commission to determine what proportion of the gross amount paid for advertising space was a gratuitous donation to the Free Press. It is clear that in any event the excess over the proper charge was substantial. The entire scheme which the company followed constitutes an unjust and unlawful discrimination.

[6] The only remaining citation count is the first. The Commission found from its investigation and averred in its citation that during 1937 The Tennessee Electric Power Company had used still another device in order to rebate to the Chattanooga Free Press and the Home Stores \$10,000 which these customers owed for electric current. During the latter part of 1937 the delinquent electric account of the Home Stores, in which account was included that of the Free Press, had mounted far above \$10,000.

The substance of this charge is contained in the following sentence taken from the citation count: "In order

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that \$10,000 of the sum charged to the Home Stores, in which sum was included the account for energy consumed by the Chattanooga Free Press, might be rebated for the use and benefit of the Chattanooga Free Press, The Tennessee Electric Power Company arranged to pay to one Silas Williams, an attorney, under the style and guise of counsel fees, the sum of \$10,000, payable in instalments of \$2,500 each, which instalments were paid on September 15, 1937, October 7, 1937, November 16, 1937, and December 13, 1937, all of which said Williams shortly thereafter turned over to the Chattanooga Free Press in ostensible consideration for the issue to him of certain shares of stock in said newspaper publishing corporation."

In the summer of 1937 Silas Williams, who was already attorney for the Chattanooga Free Press, was employed by the law department of The Tennessee Electric Power Company. Ostensibly he was to assist in the preparation of the case of Tennessee Electric Power Co. v. Tennessee Valley Authority (1938) 21 F. Supp. 947, 24 P.U.R.(N.S.) 497, commonly known as the nineteen-company case, which was tried before a statutory 3-judge Federal court sitting for the eastern district of Tennessee. On September 15, 1937, the power company paid Williams \$2,500. On August 25th Williams had purchased \$1,000 worth of stock in the Free Press, and on September 23rd, he made an additional \$1,500 purchase. The Commission finds that these stock purchases correspond exactly to the \$2500 payment received by the said Williams from the utility, in spite of the fact that the first \$1,000 subscrip-

tion was either subscribed or possibly paid for prior to the payment by the power company. On October 7, 1937, a second check for \$2,500 was issued to Mr. Williams by the power company; five days later, on October 12th, Williams made a further payment of \$2,500 to the newspaper for additional stock. The correspondence of the payments is in this instance self-evident. On November 16th Mr. Williams received a third check from the power company amounting to \$2,500; two days later, on November 18th, he purchased an additional \$2,500 worth of Free Press stock. Again the correspondence of the amounts is manifest. On December 13, 1937, Williams received a final payment of \$2,500 dollars from the utility company. He had already, on November 19th, made a final purchase of Free Press stock, this time in the amount of \$2,000. There is here some discrepancy between the two payments. This discrepancy may perhaps be explained by the testimony of Everett Allen, business manager of the Free Press, during the congressional investigation of the TVA and the power companies. Mr. Allen said: "Now that is when the entries were made in this ledger. Now, if it was paid at that particular time or not, I don't know, but that is when the entries were made. That doesn't mean that the stock was necessarily issued on that date. There might have been some variation there." At any rate, in the light of the other payments, which dovetail so neatly, the Commission is clearly warranted in finding that the final transaction was part and parcel of the others.

The following table summarizes the

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dates and amounts of payments from the utility and payments to the newspaper in 1937:

<i>From the Utility</i>	<i>To the Newspaper</i>
Sept. 15 \$2,500	Aug. 25 \$1,000
.....	Sept. 23 1,500
Oct. 7 2,500	Oct. 12 2,500
Nov. 16 2,500	Nov. 18 2,500
Dec. 13 2,500	Nov. 19 2,000

The respondent company has very emphatically denied, but without presentation of evidence, that these payments to Williams were intended to be passed on as subsidies to the Free Press and has insisted that they were bona fide fees for legal services rendered. The auditors of the Commission requested the general counsel of the respondent, who authorized the payments to the said Williams, to give an explanation of them. He gave no explanation except in the most general terms, and this Commission cannot fail to recognize that colorable transactions can be concealed behind a thicket of general expressions. The vouchers which the power company made out to Williams carry no details descriptive of the nature of the services rendered by him. On the hearing, the company presented no proof beyond a statement made by counsel, in the nature of character testimony, to the effect that Mr. Williams is a reputable attorney and would not stoop to any unworthy action. This is a singularly ineffective method of rebutting a grave charge. All the facts connected with these payments by the company to Williams and thence by Williams to the Free Press are surely within the knowledge of the respondent, and the Commission cannot but conclude that the refusal to state the details is a plain admission that they would not bear the

27 P.U.R.(N.S.)

light of examination. Courts of chancery, from time immemorial, have stigmatized similar transactions with the declaration that the suppression of the truth is the suggestion of what is false. *Suppressio veri suggestio falsi*.

During the hearing in this case Judge John R. Aust, who was appearing as counsel for the respondent, volunteered the information that he knew what Williams had done in the nineteen-company case. Having long sought this information in vain, the Commission thereupon introduced Judge Aust as a witness. He began by testifying that Williams examined and prepared witnesses, arranged testimony, advised with the other lawyers as to witnesses and testimony, had witnesses present, and attended the trial. The Commission then attempted to ascertain specifically what witnesses and what testimony Williams prepared. But Judge Aust replied: "I cannot name the witnesses he did prepare. . . . You may go through the witnesses from beginning to end and I will not name any particular witness he prepared. . . ." The transcript of the nineteen-company case, filed in this record by reference, discloses that said case was devoted almost entirely to evidence presented by (1) witnesses who described the utility systems of the complainant companies, (2) power engineering experts, (3) flood control experts, and (4) navigation experts. Aside from this, the testimony in the case was negligible. Judge Aust testified that he thought Williams did not prepare Manning and Guild, the two witnesses who described the utility system of this respondent. Nor did he think that Williams prepared any power engineering experts, any flood

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control experts, or any navigation experts.

There were still several minor jobs in the preparation and presentation of the case against the TVA. One of the more important of these was the preparation of abstracts of the franchises, ordinances, and resolutions under which The Tennessee Electric Power Company did business, including various orders and approvals of the Railroad and Public Utilities Commission. Judge Aust testified that he did this work and that Williams did not assist him. Another subsidiary task was the taking of numerous depositions of witnesses in Alabama, Georgia, and middle Tennessee. John C. Costello, vice president of the respondent, testified to the TVA Investigating Committee that the said Williams "went out and took depositions, and so forth." Yet Judge Aust testified to this Commission, when asked whether Williams was connected with the team which went out and took all depositions during the summer of 1937: "To my knowledge he did not." He then conceded that someone connected with the firm of Frantz, McConnell, and Seymour, of Knoxville, Tennessee, and someone from the firm of Baker, Hostetler, Sidlo, and Patterson, of Cleveland, Ohio, jointly performed this work.

There remains an infinitesimal fraction of the nineteen-company case with which we concede Williams could have had some connection. The trial occupied forty days, and for a few minutes on one day certain testimony was offered which the court almost immediately ruled immaterial. This testimony was prepared under the supervision of Lawrence N. Spears, general counsel

for The Tennessee Electric Power Company, and was intended to give evidence as to annual crop values on lands to be covered by the TVA reservoirs at Chickamauga, Pickwick, Gunter'sville, and Wheeler. Such services as Williams rendered, assisting Spears, could have been in the preparation of eleven witnesses intended to present this testimony, only one of whom, T. J. Davis, was ever allowed to testify. But even so, there is no indication that Williams prepared this irrelevant testimony unaided and alone; on the contrary, in argument Mr. Spears advised the court that in developing these eleven witnesses he had had "three teams out of two men each for about fifteen or twenty days." So if Mr. Williams actually collaborated on this task, he had the assistance of at least five others. The Commission has noted the marked discrepancy between the Spears estimate before the court of fifteen to twenty days as the length of the work of the six men and the Aust estimate before this Commission of more than four months as the length of Mr. Williams' work.

Finally, there is no intimation whatever, either in the nineteen-company case or in the congressional investigation or in the present case, that Williams had anything to do with the evidence presented by any of the eighteen companies other than The Tennessee Electric Power Company.

The Commission must here emphasize that this is a case against The Tennessee Electric Power Company, and not against Silas Williams. The Commission has authority by law to regulate the business of power companies, but it does not have and would not attempt to assert any authority to

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regulate the affairs of private citizens. The citation averring unlawful practices was directed against the utility, and not against the attorney. The inquiry into the payments to Williams was not made with the idea of reflecting upon his integrity as a member of the bar, but only for the purpose of getting at the truth in regard to the practices of the power company. The Commission has no concern and accordingly makes no finding with reference to the character of the conduct of the attorney.

The evidence before this Commission plainly indicates, however, and the Commission so finds, that the \$10,000 paid by The Tennessee Electric Power Company to Silas Williams was not commensurate with his services and was not actually earned by him as an attorney fee. The Commission also finds, after a careful and painstaking scrutiny of all the evidence, that \$9,500 of the \$10,000 paid Williams passed from the utility through the attorney to the newspaper. Furthermore, the record establishes the clear presumption that the payments were intended by The Tennessee Electric Power Company as a disguised subsidy to the Chattanooga Free Press.

Courts having jurisdiction over equity matters have long been concerned with transfers of property and money between individuals under circumstances indicating deceit or fraud. Such courts have come to recognize certain badges and labels which usually mark acts of bad faith. The individual who wishes to practice deception usually disguises the transaction so as to conceal the real facts. Courts of equity, however, take pride in their ability to discern evidences of depar-

ture from the normal mode of doing business. By such vigilance alone can unlawful practices and fraudulent conveyances frequently be detected.

In weighing the conduct of the respondent company in this transaction, the Commission has been guided by the usual and accepted rules of evidence as to practices of deception. A learned and revered Tennessee jurist has given us a classic summary of these principles:

"Fraud is seldom established by direct and positive proof, and such proof is not necessary. Generally, the first effort of a man, who intends to commit a fraud, is to throw a veil over the transaction, to conceal it from discovery, to baffle all attempts at detection, and to shield it against attack. No man willingly furnishes the proof of his own turpitude. Fraud is, for this reason, rarely perpetrated openly and in broad daylight. It is committed in secret, and is usually hedged about by every guard that can be devised to prevent its discovery and exposure. Its path is crooked and circuitous, its footprints are carefully covered up, the signs of its operations are diligently removed, or attempted to be removed, and the mask of honesty and good faith is put over the face of the real transaction. For these reasons, fraud is usually proved by circumstantial evidence. . . . Fraud assumes many shapes, disguises and subterfuges, and is generally so secretly hatched that it can only be detected by a consideration of facts and circumstances, which are frequently trivial, remote, and disconnected, and which cannot be interpreted without bringing them together, and contemplating them all in one view. In order to do this it is necessary to pick

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one fact or circumstance here, another there, and a third yonder, until the collection is complete. Each detached piece of evidence is not, therefore, to be rejected when offered, because apparently trivial. A wide latitude of evidence is allowed; and if a fact or circumstance relates directly, or indirectly, to the transaction, it is admissible, however weak or slight it may be, its relevance depending, not upon its weight or force, but upon its bearing or tendency." Gibson's Suits in Chancery (4th ed.) 388-389 (1937).

Several deviations from the normal have already been indicated in our examination of the evidence concerning the payments to Silas Williams. The general counsel of the respondent, in reply to inquiries from the auditors for the Commission, described the nature of Williams' legal services in general rather than in specific terms. The vouchers in payment to the attorney are devoid of specific details as to his work in the nineteen-company case. Indeed, Judge Aust, in his testimony before the Commission, could not name a single witness or specifically describe a single phase of the evidence that the attorney prepared.

Other departures from the normal may be pointed out. The Commission knows that ordinarily special attorneys' fees are not paid by utilities until the close of the services. Thus Judge Aust, who was also employed in the nineteen-company case, testified that the amount of his fee had not even yet been fixed, nearly a year after the close of the case. Yet, Silas Williams had been paid \$5,000 of his "fee" before the case began in November, 1937, and the remaining \$5,000 had been paid long prior to the conclusion

of the case in January, 1938. Manifestly these unusually prompt fee payments were not made because of Williams' financial necessity, because a man in straitened circumstances is not in the market to purchase securities. The payments were obviously timed not because Williams needed the cash but because the Free Press needed the cash, as is evidenced by its delinquency to the respondent company.

Furthermore, the Commission knows that the payments to Mr. Williams were unusual in still another respect. In the course of rate investigations involving other companies which were parties to the nineteen-company suit, the Commission has learned that to defray the legal expense of that case there was created a common fund to which all parties contributed on the basis of the number of active electric meters in service. Into this fund several hundred thousand dollars have been paid. It is significant that Silas Williams was not paid out of this fund but was paid directly from the treasury of The Tennessee Electric Power Company. Possibly the services he was rendering were not regarded by the other complainants as of sufficient importance in the common defense to merit payment out of this general fund. This is not a conclusive test of the good faith of the \$10,000 fee, but it surely calls for careful scrutiny as a variation from the normal.

The Commission may also look to the entire background out of which this transaction stems. Suspicion would attach to the payment of this fee from the unusual nature of the transaction alone, but this suspicion ripens into positive evidence when viewed as

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simply one of a long series of acts, all designed for the same purpose. The method of giving the Home Stores and the Free Press long credit and unlawful rebates for energy charges such as would bolster and support these organizations in the modern competitive process and the method of further favoring the Free Press through the payment of exorbitant advertising rates both support the finding of the Commission that the Williams' fee arrangement was simply a third method of transferring funds from the treasury of The Tennessee Electric Power Company into the treasury of the Chattanooga Free Press. The Commission also finds that this transfer of funds was unauthorized and unlawful. At the time, the Free Press was a customer owing large electric bills to the power company, and with the prospect of

consuming additional power in the future. The \$10,000 payment simply enabled it to pay these past and future power bills. These are the final conclusions of the Commission on the case as a whole.

A certificate of the Commission will issue to a district attorney of the state of Tennessee relating the findings of fact and conclusions of law in conformity with the above opinion. An appropriate order of the Commission in accordance with this opinion will be prepared, which will terminate and dispose of the citation of the defendant for the various matters growing out of the relations between it, the Home Stores, Inc., and the Chattanooga Free Press.

Dunlap, Chairman, and Hudson, Commissioner, concur.

CALIFORNIA RAILROAD COMMISSION

Re Western Water Company

[Decision No. 31481, Application No. 22338.]

Dividends, § 2 — Distribution of surplus — Necessity of authorization.

1. Distribution to stockholders of a surplus no longer required in the business of a public utility is a matter that need not be authorized by the Commission, p. 173.

Security issues, § 38 — Necessity of authorization — Change in par value of stock.

2. A reduction in the par value of capital stock of a public utility constitutes an issue of stock for which authorization should be obtained from the Commission, p. 173.

[November 28, 1938.]

APPPLICATION by water company for authority to reduce par value of capital stock to create reduction surplus and to distribute the same to stockholders; reduction of par value authorized.

RE WESTERN WATER CO.

By the COMMISSION: Western Water Company proposes to reduce the par value of its outstanding stock from \$50 per share to \$35 per share, thereby reducing its aggregate stated capital from \$1,050,000 to \$735,000. Thereafter it intends to distribute \$315,000 to its stockholders, as capital, no longer according to its petition, required in its business.

As of September 30, 1938, applicants report assets and liabilities as follows:

<i>Assets</i>	
Cash	\$290,411.58
Accounts receivable	40,320.47
Accrued interest	3,738.79
Bonds	309,388.77
Current assets	85,955.38
Capital assets	1,944,313.02
Total	\$2,674,128.01
<i>Liabilities</i>	
Notes payable—Suspense	\$1,067.93
Accounts payable	8,636.55
Guaranty deposits	5,560.66
Accrued taxes	14,600.00
Unemployment insurance }	1,190.83
Old-age pension tax }	
Depreciation	1,420,823.06
Earnings undistributed	172,248.98
Capital	1,050,000.00
Total	\$2,674,128.01

In paragraph four of its petition, applicant, in support of its request, states: "That applicant's plants and system were expanded from 1920 to 1927 in order to provide an additional water supply and also to serve the extensive oil development in the Midway Oil Fields. For some time now its fixed capital account has not increased, because of the fact that its facilities are adequate for all demands, present or in prospect. When it becomes necessary to replace field lines, it is probable that such replacing lines will be of smaller size and therefore will be less costly to install. Those conditions

particularly pertain to the northerly and southerly sections of the service area, and the same will likewise affect the cost of replacement, when and if necessary, of other units of the system.

"That due to the fact that consumption of water for oil field use had decreased, and also to the fact that the system is adequate for all present and prospective uses, applicant has been unable, for several years, to reinvest its depreciation accruals in plant, and it has likewise been unable to invest the same in securities that would yield any depreciable return."

[1, 2] Applicant's balance sheet as of September 30, 1938, shows that it had cash on hand or in bank in the amount of \$290,411.58 and had invested in bonds the sum of \$309,388.77. Of its investment in bonds and cash on hand, as stated, it proposes to distribute \$315,000. Such distribution is a matter that need not be authorized by the Commission. We feel, however, that the change in the par value of applicant's outstanding stock is a matter that comes under the jurisdiction of the Commission and the order herein will authorize such reduction.

ORDER

Western Water Company, having asked permission to reduce the par value of its capital stock from \$50 to \$35 per share, the Commission having considered applicant's request, and being of the opinion that this is not a matter in which a hearing is necessary, that in effect the reduction of the par value of the stock constitutes an issue of stock which should be authorized by the Commission, that the money, property, or labor to be procured or paid for by the issue of said stock is

CALIFORNIA RAILROAD COMMISSION

reasonably required by applicant for the purpose herein stated, and that the expenditures for such purpose are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

It is hereby *ordered*, that Western Water Company be, and it is hereby authorized to reduce the par value of its capital stock from \$50 to \$35 per share, such reduction to be effected either by stamping such fact of reduction upon the shares of capital stock

or to exchange such shares for new shares evidencing the fact of such reduction.

It is hereby *further ordered*, that within sixty days after the reduction of the par value of applicant's stock it shall file with the Commission, a report containing the names of its stockholders, the number of shares of stock held by each stockholder and a statement showing the manner in which the reduction in the par value of its stock has been effected.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Robert Pfeifle, Mayor of City of
Bethlehem et al.

v.

Pennsylvania Power & Light Company

[Complaint Docket Nos. 9556, 10731, 10867.]

Expenses, § 84 — Payments to affiliate — Services.

1. Payments to an affiliated company for services and expenses were allowed as an operating expense for the purpose of temporary rates, where elimination of the related company from the operating arrangements of the utility would necessitate adjustments, some of which might impede the progress of important studies relating to permanent rates, p. 176.

Rates, § 630 — Temporary reduction — Classes to benefit — Industrial consumers.

2. A ruling that a temporary rate reduction should be for the benefit of consumers other than industrial consumers was modified to allow industrial consumers a portion of the reduction, p. 177.

Rates, § 234 — Diverse schedules.

3. An electric utility which has in effect a large number of separate and distinct schedules, principally inherited through mergers of utilities over a wide territory, should reduce the number of schedules in the interest of uniformity, since this condition can only result in confusion, complaint, and misunderstanding, p. 177.

Rates, § 283 — Kinds — Room type — Connected loads — Number of sockets — Estimated demand.

4. Charges based upon the number of rooms, connected domestic load, num-

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ber of sockets, connected power load, and estimated demand, are undesirable, p. 177.

Rates, § 353 — Residential Electric — Room type — Connected load.

5. Electric rate schedules of the room type or connected load type are not proper for application to residential consumers, p. 178.

Rates, § 322 — Electric — Demand.

6. Appropriate provision should be made in a residential electric rate schedule for measuring the demands of consumers having large motors or other large current-consuming apparatus, using measured demands in the application of excess capacity charges instead of applying excess capacity charges based upon the connected load, p. 178.

Rates, § 284 — Electric — Commercial and small power.

7. Any charge for service which is based upon the number of sockets or outlets on a consumer's premises produces results as between individual consumers taking service thereunder which may not be justified when consideration is given to the demands of the consumers, p. 179.

Rates, § 351 — Electric — Residential and commercial — Differential.

8. A differential between present residential and commercial rates for the smaller commercial consumers was required to be eliminated and for larger commercial consumers materially reduced, p. 180.

Rates, § 323 — Electric — Demand meters — Commercial consumers.

9. An electric utility should install demand meters for service to all commercial consumers who take their entire service through one meter and whose demands are in excess of 3 kilowatts, p. 180.

Rates, § 347 — Electric — Small power and commercial lighting.

10. Provision should be made for ultimate combination of small power service with commercial lighting and power service through one meter, and provision should be made for ultimate elimination of all existing small power schedules, p. 180.

Rates, § 313 — Combined meter readings.

11. Elimination of a provision permitting the combining of meter readings of different properties of any consumer was required, p. 181.

Discrimination, § 96 — Electric rates — Commercial and power consumers.

12. Large commercial and industrial consumers having the same demands and characteristics of load and taking service under similar conditions should be served under the same schedules, p. 181.

Rates, § 327 — Electric — Off-peak billing.

13. Provision should be made that consumers who do not comply during any month with the requirements of schedules for ice and refrigeration service, with provisions for off-peak hours, shall be billed under the applicable general light and power schedule for such month, p. 183.

Rates, § 322 — Electric — Resale — Power factor — Demand.

14. An electric utility was required to incorporate in a schedule of rates for resale service the same power factor provisions, methods of determining billing demands, and payment provisions as were incorporated in schedules prescribed for general light and power service, p. 183.

[December 5, 1938.]

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EXCEPTIONS to findings and determinations in electric rate investigation; rulings on exceptions made and new tariffs ordered.

By the COMMISSION: Under date of September 28, 1938, the Commission issued an order nisi in this proceeding, making certain findings and determinations and prescribing certain rate schedules for residential and commercial service and for sales of electric energy to public utilities and municipalities for resale to their own consumers. Respondent has filed exceptions to certain of the findings and determinations made by us in said order nisi, but has waived argument on the exceptions.

We have carefully considered respondent's exceptions, and have reached the conclusion that, in view of the progress of preparation of definite data in the pending proceeding against respondent for the determination of so-called permanent rates, certain matters considered and determined in our order nisi may properly be held in abeyance for determination in connection with the prescription of permanent rates. Respondent has practically completed an inventory of its property. However, the Commission staff has not yet completed its check of the company figures, and the pricing of the company inventory on an original cost or reproduction cost basis has not progressed to the point of availability for the determination of temporary rates. It is therefore impossible at this time to establish a rate base wholly upon the basis of either original cost or reproduction cost.

[1] In our order nisi, operating charges claimed by respondent on ac-

count of payments for services and expenses made to an affiliated company, Ebasco Services Incorporated, were disallowed. This item was estimated at approximately \$300,000 for 1938.

John S. Wise, Jr., president of respondent, testified that, if Ebasco Services Incorporated did not render financial, engineering, purchasing, and other services to respondent, it would be necessary to establish a New York office and to make large increases in the expert and general staff of respondent. It is also urged that many economies of various types are effected by the coördination of functions rendered possible by the Ebasco Services contract. While we are not convinced that these arguments are conclusive, we recognize that the elimination of Ebasco Services Incorporated from the operating arrangements of respondent would necessitate adjustments, some of which might impede the progress of the important studies relating to permanent rates. Upon further consideration of this item, therefore, we feel that the public interest would not be adversely affected at this time by allowing it as an operating expense for the purpose of temporary rates. In our order prescribing so-called permanent rates, we will reexamine the propriety of such payments, giving careful consideration to the necessity for the services received by respondent, and to the actual and legitimate costs incurred by Ebasco Services Incorporated in rendering such services, but for the pur-

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pose of this order we will consider the service fees as allowable.

In our order nisi, a rate of return of 6 per cent was used. In its exceptions, respondent urges that, in view of its situation, allegedly different from that of other public utilities, a greater rate of return should be allowed. Without in any way indicating approval of respondent's position, we will defer a final determination of the allowable return. It may be that additional evidence presented prior to prescription of permanent rates will show that the proper rate of return should be greater or less than 6 per cent.

In the light of the foregoing, we find and determine that temporary rates should be imposed, which will result in a reduction of respondent's electric revenues to the extent of approximately \$2,300,000, annually.

Rates

Our order nisi of September 28, 1938, provided a reduction of electric operating revenues to the extent of \$2,600,000, annually. The instant order provides a reduction of approximately \$2,300,000, annually. Therefore, it becomes necessary to prescribe a completely new set of rate schedules designed to produce the effect on revenues now contemplated.

[2] Since the issuance of the order nisi, the matter of the proper distribution of the reduction in rates has been given further consideration, and the exceptions of respondent in this respect have been carefully analyzed. We now conclude that a portion of the reduction should go to industrial con-

sumers. This conclusion will be given effect in the schedules prescribed herein.

[3, 4] Any consideration of the rate structure of respondent must recognize the facts that respondent is now rendering electric service over a wide area, previously served by more than 300 operating electric companies, each with its own set of rate schedules for the several usual classes of service, and that respondent's tariffs still contain a large number of these rate schedules of the original companies.

The forms of these old rates vary widely, with the result that charges for various classes of service and for various amounts of consumption vary considerably in different parts of the territory. Many of these rate forms were in existence prior to the inauguration of regulation in Pennsylvania in 1914, and were formulated when rate-making science was practically nonexistent. They do not fit present conditions nor accord with modern rate-making principles.

As shown by the record, respondent has, in the various mergers of these operating companies into the present company, extended its standard or system-wide rates to the consumers of the merged companies and applied these rates to all consumers who would benefit thereby, leaving the local inherited rates in effect for those consumers of the merged company who would receive no benefit at the time, and withdrawing the local rates only when no consumers were being served thereunder.

This practice of respondent has pro-

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duced substantial progress in the elimination of schedules and simplification of tariffs. Respondent's Exhibit No. 2 shows that, between December 31, 1930, and December 31, 1937, the following results have been obtained:

Tariffs eliminated	44
Pages in tariffs eliminated	1,181
Schedules eliminated:	
Residential	16
Commercial	23
Small power	21
Large power	13
Street lighting	53
Municipal lighting	2
	— 128

However, on December 31, 1937, 195 separate and distinct schedules were still in effect some of which, principally the inherited schedules, are so constructed as to be obviously discriminatory, antiquated, or improper. This condition can only result in confusion, complaint, and misunderstanding. Some of the residential schedules are of the so-called room type, others of the connected load type, while the company's standard schedule is the simple block type. The various commercial and small power schedules are of the socket or outlet type, the connected load type, the estimated demand type, and the measured demand type. In our opinion, the charges based upon the number of rooms, connected domestic load, number of sockets, connected power load, and estimated demand are undesirable under the conditions obtaining in respondent's territory and should be eliminated.

As pointed out in our order nisi, it is obvious that respondent has a rate schedule situation requiring drastic revision at this time, and we find that

provision should be made for ultimate elimination of the schedules which are not now considered desirable. We consider it to be detrimental to the best interests of both the consumers and the respondent to continue in effect such a large number of widely varying rate schedules. The situation requires, in the prescription of new rates, that the number of schedules be materially reduced, and we believe that this should be done at this time, and that uniform schedules for residential service, commercial and small power service, large commercial and industrial service, and sales to private and municipal systems for resale should, as soon as possible, be made effective throughout the entire territory.

In order to accomplish the foregoing, we will take up each class of service separately.

Residential

[5, 6] Approximately 90 per cent of respondent's residential consumers take service under the present system standard schedule RS-1. The remaining 13 schedules for this class are of the room type or connected-load type, and are not the type which we consider proper for application to this class of consumers.

The application of the single residential rate schedule herein prescribed will result in substantial reductions to consumers now billed under system standard rate schedules and using less than 70 kilowatt hours per month, and proportionally smaller reductions to such consumers using in excess of 70 kilowatt hours per month.

We therefore prescribe the following single schedule for residential serv-

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ice supplied through one meter to apply throughout respondent's territory.

Net Monthly Rate

75 ¢ which includes 7 kw. hr.
 5.5¢ per kw. hr. for the next 60 kw. hr.
 3.0¢ per kw. hr. for the next 63 kw. hr.
 2.0¢ per kw. hr. for the next 120 kw. hr.
 1.5¢ per kw. hr. for all additional kw. hr.

Payment

When bills are paid within 15 days from the date thereof the above net rate applies. When not so paid the gross rate applies, which gross rate is the above net rate plus 5% of the then unpaid balance of the monthly bill.

Appropriate provision should be made in the above rate schedule for measuring the demands of consumers having large motors or other large current-consuming apparatus, using such measured demands in the application of excess capacity charges, instead of respondent's present method of applying excess capacity charges based upon the connected load.

On the date on which the foregoing rate schedule is made effective, respondent shall withdraw from its tariffs the following schedules:

A Wilkes-Barre	RL-2 Hazleton and
H-12 Lancaster	Susquehanna
R Harrisburg	Divisions
FS-2A General	# 2 Lemoyne
R-2 Harrisburg	A-6 Lancaster
RS-1 General	A-4 Harrisburg

and the following schedules as applied to residential service:

# 1 Lemoyne	E Shamokin
SA-1 Sinking Spring	B-1 Lancaster

The application of the newly prescribed schedule will result in an aggregate net reduction to this class of consumers of approximately \$785,000, annually.

Commercial and Small Power

[7] On June 30, 1937, respondent was rendering electric service to 59,827 commercial and small power con-

sumers under 59 different rate schedules, only 6 of which were system standard schedules applicable throughout the territory. All of the remaining schedules were inherited by respondent from predecessor companies, and were retained in the respondent's tariffs for the benefit of certain consumers taking service thereunder. Approximately 87 per cent of all commercial and small power consumers are now taking service under the 6-system standard schedules. There is no uniformity in the form or application of the various other commercial and small power schedules. The principal system standard commercial schedule is CS-1C, which is a so-called socket type rate, approximately 74 per cent of the present commercial and small power consumers taking service thereunder. It is our opinion that any charge for service which is based upon the number of sockets or outlets on a consumer's premise produces results, as between individual consumers taking service thereunder, which may not be justified when consideration is given to the demands of the consumers. The remaining system standard commercial and small power rates, at the present time, are based partly upon kilowatts of demand, estimated or measured, connected load or horsepower of apparatus. The 53 local commercial and small power schedules are of all types and descriptions and of varying applications. We consider it to be desirable, in respondent's case, that provision be made in the new schedules of commercial rates and small power rates, for the transfer of respondent's consumers from the contract socket form of rate to rates based on kilowatts of demand or on actual

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consumption, with provision for a minimum charge.

[8] We are of the opinion that a substantial portion of the rate reduction herein ordered should be applied to commercial consumers, and that the existing differential between the present residential and commercial rates for the smaller commercial consumers should be eliminated, and for the larger commercial consumers materially reduced. The differential has been eliminated herein for all consumers using less than 67 kilowatt hours per month representing about 56 per cent of all commercial consumers.

The range of use between small and large users of commercial and small power service is such as to require more than one rate. We therefore prescribe two rates, one for small users and the other for consumers having demands of 3 kilowatts or more. Where wiring changes are required to enable the consumer to secure the full benefit of a single meter rate, such changes should be made at the consumer's expense.

We therefore prescribe the following schedules for general commercial light and power service:

GENERAL LIGHT AND POWER SERVICE—LESS THAN 3 KW.

Net Monthly Rate

75 ¢ which includes the first 7 kw. hr.
5.5¢ per kw. hr. for the next 593 kw. hr.
4.5¢ per kw. hr. for the next 1,400 kw. hr.
3.0¢ per kw. hr. for all additional kw. hr.

GENERAL LIGHT AND POWER SERVICE—3 KILOWATTS MINIMUM.

Net Monthly Rate

\$3.00 for the first 3 kw. of the billing kw.
1.00 per kilowatt for all additional kilowatts of the billing kw.

The above charges entitled consumer to use 10 kw. hr. for each kilowatt of the billing kw.

5.5¢ per kw. hr. for the next 50 kw. hr.
per kilowatt of the billing kw.
3.0¢ per kw. hr. for the next 1,000 kw. hr.
2.0¢ per kw. hr. for the next 3,000 kw. hr.
1.5¢ per kw. hr. for all additional kw. hr.

Payment (Applying to each of the above two schedules)

When bills are paid within 15 days from the date thereof the above net rate applies. When not so paid the gross rate applies, which gross rate is the above net rate plus 5% of the then unpaid balance of the monthly bill.

Upon the effective date of these two new schedules, respondent shall withdraw from its tariffs the following schedules:

[List of schedules omitted.]

[9] Respondent shall, within a period of one year from the effective date of the rates prescribed by this order, take the necessary steps to install demand meters for service to all commercial consumers who take their entire service through one meter and whose demands are in excess of 3 kilowatts.

On June 30, 1937, respondent was rendering service to 8,612 small power consumers through separate meters and under 30 small power schedules. Only one of these schedules is a system standard schedule and, on June 30, 1937, was being applied to 3,869 consumers.

[10] We consider it important to make provision for ultimate combination of small power service with commercial lighting and power service through one meter, and to make provision for ultimate elimination of all existing small power schedules. Many consumers now take their commercial requirements under commercial lighting schedules, and their small power requirements under small power schedules. These consumers are being

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billed upon the basis of two different meter readings at two different rates.

Schedule P-10, which is the present system standard small power schedule, should remain in effect without change and, as of the effective date of the rates prescribed by this order, should be limited to present consumers at present locations. All other small power schedules as listed below shall be retained in respondent's tariffs for a period not to exceed one year from the effective date of the rates prescribed by this order, and shall be as of that effective date also limited to present consumers at present locations.

[List of schedules omitted.]

[11] In addition, in the case of schedules B-2 and B-3 in the above list and schedules B-4 and B-5, respondent shall, as of the effective date of the rates prescribed by this order, eliminate the provision which permits the combining of meter readings of different properties of any consumer. Respondent is further ordered to install demand meters on the service to all consumers served on these four schedules.

During the period of twelve months following the effective date of the rates prescribed by this order, respondent should fully and diligently inform the consumers taking service under all small power schedules, of the beneficial results that might be obtained by combining their service through one meter. If any consumers remain on these various small power schedules at the end of the 12-month period specified, they should be transferred to Schedule P-10. Respondent should also fully and diligently inform the consumers on rate Schedule P-10 of the beneficial results that might be ob-

tained by rearranging their wiring to combine their lighting requirements with the small power requirements, and taking all service under the appropriate herein prescribed new schedules. At the end of the 12-month period specified, rate Schedule P-10 should be further limited in its application to those consumers who, at the end of that period, have not rearranged their wiring to take their lighting and small power requirements through one meter. Therefore, whenever all consumers on all of these various small power schedules, including P-10, make it possible to render service to them through one meter, Schedule P-10 can also be withdrawn. Thus, all new small power consumers, not served by respondent at any location prior to the effective date of the rates prescribed by this order, under existing commercial lighting or small power schedules, shall be given such service under the new prescribed system standard commercial and small power schedules.

We estimate that the net reduction provided for commercial and small power consumers as the result of these two new rates will approximate \$1,120,000, annually.

Large Commercial and Industrial

[12] In the general large commercial and industrial class, there are 1,121 consumers being served under 42 different schedules. We recognize that no one schedule can be prescribed which will equitably cover the wide range in demands and voltage of delivery of service to this class of consumer. However, in our opinion, consumers in this class, having the same demands and characteristics of load and taking service under similar conditions,

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should be served under the same schedules, and we therefore prescribe the following new general light and power rates to be applied to all consumers now served under the schedules to be withdrawn as listed below, who take all service through one meter:

Application of Schedule

General light and power service for not less than 25 kilowatts from available lines of approximately 220 to 22,000 volts when company supplies only one transformation from line voltage, or from available lines of approximately 4,000 volts or less when no transformation is necessary.

Net Monthly Rate

- \$75.00 for the first 25 kilowatts of the billing kw.
- 2.90 per kilowatt for the next 75 kw. of the billing kw.
- 1.70 per kilowatt for the next 100 kw. of the billing kw.
- 1.50 per kilowatt for all additional kw. of the billing kw.
- The above charges entitle consumer to use 40 kw. hr. for each kilowatt of the billing kw.
- 2.0¢ per kw. hr. for the next 30 kw. hr. per kilowatt of the billing kw., but not less than 3,000 kw. hr.
- 1.0¢ per kw. hr. for the next 180 kw. hr. per kilowatt of the billing kw., but not more than 180,000 kw. hr.
- .6¢ per kw. hr. for the next 150 kw. hr. per kilowatt of the billing kw., but not more than 150,000 kw. hr.
- .5¢ per kw. hr. for all additional kw. hr.

Application of Schedule

General light and power service for not less than 25 kilowatts from available lines of approximately 11,000 volts or higher when consumer furnishes and maintains all equipment necessary to transform the energy from line voltage.

Net Monthly Rate

- \$65.00 for the first 25 kilowatts of the billing kw.
- 2.60 per kilowatt for the next 75 kilowatts of the billing kw.
- 1.60 per kilowatt for the next 100 kilowatts of the billing kw.
- 1.40 per kilowatt for all additional kilowatts of the billing kw.

The above charges entitle consumer to use 50 kw. hr. for each kilowatt of the billing kw.

- 1.5¢ per kw. hr. for the next 50 kw. hr. per kilowatt of the billing kw., but not less than 5,000 kw. hr.
- 1.0¢ per kw. hr. for the next 150 kw. hr. per kilowatt of the billing kw., but not more than 150,000 kw. hr.
- .6¢ per kw. hr. for the next 150 kw. hr. per kilowatt of the billing kw., but not more than 150,000 kw. hr.
- .5¢ per kw. hr. for all additional kw. hr.

Application of Schedule

General light and power service for not less than 300 kilowatts from available lines of approximately 66,000 volts when consumer furnishes and maintains all equipment necessary to transform the energy from line voltage.

Net Monthly Rate

- \$400.00 for the first 300 kilowatts of the billing kw.
- 1.30 per kilowatt for all additional kilowatts of the billing kw.
- The above charges entitle consumer to use 50 kw. hr. for each kilowatt of the billing kw.
- 1.5¢ per kw. hr. for the next 50 kw. hr. per kilowatt of the billing kw.
- 1.0¢ per kw. hr. for the next 150,000 kw. hr.
- .6¢ per kw. hr. for the next 150,000 kw. hr.
- .5¢ per kw. hr. for all additional kw. hr.

Payment (Applying to each of the above three schedules.)

When bills are paid within 15 days from the date thereof the above net rate applies. When not so paid the gross rate applies, which gross rate is the above net rate plus 5% on the first \$200 of the then unpaid balance of the monthly bill and 2% on the remainder thereof.

In each of the above schedules the respondent shall provide that the billing kilowatt for the current month is to be not less than 70 per cent of the maximum billing kilowatt of any of the preceding eleven months and incorporate its present standard power factor provision, its methods of determining the billing demands, and a uniform provision and listing of hours for those consumers who take service off-peak.

As of the effective date of the rates prescribed by this order, respondent shall withdraw from its tariffs the following schedules: [List of schedules omitted.]

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[13] Respondent has in its tariffs schedules IC-5B and IC-6B for the ice and refrigeration class of service, and these schedules are being applied to all but four of the 173 consumers presently served under this classification, which four consumers are served under Schedule P-Harrisburg. Schedules IC-5B and IC-6B have certain off-peak provisions which should be brought into conformity with the corresponding provisions in the herein newly prescribed rates for commercial and industrial general light and power service. These ice and refrigeration schedules likewise do not provide how the billing should be calculated in the event that the consumer does not operate his plant in accordance with the provisions of the schedule. Therefore, respondent shall retain these schedules IC-5B and IC-6B with the same off-peak hours as apply in the commercial general light and power schedules; and shall make provision that consumers who do not comply during any month with the requirements of these two schedules shall be billed under the applicable general light and power schedule for such month.

We estimate that the net reduction provided for all these large commercial and industrial consumers will be approximately \$376,300, annually.

Resale

[14] Respondent sells electric energy to two privately owned electric public utilities and to four municipalities, all of which redistribute the energy to their own consumers. Two of these consumers, namely, the borough of Watsontown and the Citizens Electric Company of Lewisburg, re-

ceive service under Schedule P-13PU; the boroughs of Mifflinburg, Catawissa, and St. Clair receive service under schedule P-23; and the Mauch Chunk Heat, Power and Electric Light Company receives service under Schedule P-23B. In our opinion these six consumers should be given the benefit of a reduction in rates. Therefore, we prescribe the following schedule of rates which shall be applicable to all six consumers.

Application of Schedule

Three phase, 60-cycle service for resale purposes to public utility electric light and power companies and municipalities now serving in territory adjacent to company's chartered territory, for not less than 150 kilowatts at approximately 11,000 volts or higher.

Net Monthly Rate

\$412.50 for the first 150 kilowatts of the billing kw.

1.95 per kilowatt for the next 50 kilowatts of the billing kw.

1.70 per kilowatt for all additional kilowatts of the billing kw.

The above charges entitle consumer to use 50 kw. hr. for each kilowatt of the billing kw.

1.8¢ per kw. hr. for the next 50 kw. hr. per kilowatt of the billing kw.

1.1¢ per kw. hr. for the next 150 kw. hr. per kilowatt of the billing kw., but not more than 150,000 kw. hr.

.9¢ per kw. hr. for the next 150 kw. hr. per kilowatt of the billing kw., but not more than 150,000 kw. hr.

.7¢ per kw. hr. for all additional kw. hr.

This rate is based upon consumer ownership and maintenance of all necessary transforming equipment and supplementary apparatus. If respondent owns and maintains said facilities the above net rate shall be increased 30 cents per kilowatt of the billing kw. and the point of delivery shall be at the low voltage side of the transformers.

Respondent is further ordered to incorporate in this schedule the same power factor provisions, methods of determining the billing demands and payment provisions as are to be incorporated in the herein prescribed general light and power schedules.

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Upon the effective date of this newly prescribed resale schedule, respondent is hereby ordered to withdraw from its tariffs the following schedules:

P-23 P-13PU P-23B

We estimate that respondent's revenues will be reduced approximately \$16,000, annually, by the application of the foregoing rate to these six consumers.

Immediately upon giving effect to the rate program outlined above, respondent will have one residential schedule instead of 14, 2 small commercial schedules instead of 19, 3 large commercial and industrial schedules instead of 42, and one rate for resale consumers instead of 3. Twelve months after the effective date of the rates prescribed herein, 29 small power schedules will be withdrawn. Thus, in the program of rate reductions for the several classes of consumers discussed above and the program of rate simplification, provisions has been made for the substitution of 7 new system standard schedules in place of 107 schedules, resulting in the elimination of 100 schedules. We do not think it advisable at this time to provide for the elimination of the remaining schedules and such other

schedules should be continued in effect.

The above findings have been reached after careful consideration of the matters involved, including detailed study of the complicated rate structure of respondent comprising approximately 200 separate rate schedules. We do not consider it necessary to pass seriatim upon all of the exceptions filed by respondent to our order nisi. The issues raised by the exceptions will necessarily be specifically determined upon consideration of permanent rates, and such determination can then be based upon a complete record. At this time we do not make final pronouncement upon any of the issues involved. Our analysis of the record, however, leads us to the conclusion that an immediate reduction in rates should be made, and that the existing maze of rate schedules should be clarified; therefore,

Now, to wit, December 5, 1938, it is *ordered*: That respondent, Pennsylvania Power & Light Company, file, post, and publish on or before December 19, 1938, a new tariff or supplements to existing tariffs, embodying the rates and provisions contained in the foregoing report, said new rates and provisions to be given effect in all bills rendered on or after January 1, 1939.

William Speaker
v.
Larkin Rural Telephone Company

[T-567-38.1]

Service, § 117 — Telephones — Duty to serve.

1. Telephone companies, being subject to the law relative to common carriers, are required to furnish reasonably adequate service and facilities, p. 186.

Service, § 117 — Telephones — Public interest — Refusal to serve.

2. Persons must be presumed to know that in entering the telephone business they are engaging not in a strictly private enterprise but in a public business charged with the public interest, subject to public control and in which they could not arbitrarily give or refuse to give service in accordance with their own judgment, whim, or caprice, p. 186.

Service, § 125 — Telephones — Mutual companies — Duty to serve.

3. A mutual telephone company must hold itself ready to provide reasonably adequate service to all, members and nonmembers, without discrimination as to rates or service, who may be so located as to be within the territory of the company, p. 186.

Commissions, § 28 — Jurisdiction — Legal questions — Property rights — Trespass.

4. The Commission has no power to order a telephone company to remove its poles from land since this is a question of property rights and trespass on which the Commission is not competent to pass, the remedy lying in the state courts, p. 186.

[December 16, 1938.]

PETITION requesting that mutual telephone company be ordered to furnish service to petitioner; granted.

By the COMMISSION: Petition was received on August 17, 1936, from William Speaker, resident of Larkin township, Midland county, Michigan, requesting that the Larkin Rural Telephone Company, a mutual organization, be ordered to furnish telephone service to said William Speaker and requesting further that the Larkin

Rural Telephone Company be ordered to remove its poles from the land of said petitioner. The above cause was brought on and heard before the Commission.

It appears from the testimony and evidence offered at said hearing that the petitioner, William Speaker, was receiving telephone service from the

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Larkin Rural Telephone Company prior to March 31, 1936. On or about March 31, 1936, the telephone company caused the telephone line to Mr. Speaker's residence to be cut, and have since that time refused service to him.

The company's defense of their action is that Mr. Speaker wrongfully acquired "stock" in the Larkin Rural Telephone Company, caused his telephone to be connected without authority of the officers of the company, and as such was a trespasser.

[1] The statutes of Michigan in unmistakable language declare that telephone companies are common carriers (§ 11700 C. L. 1929). Every common carrier is required to furnish reasonably adequate service and facilities (§ 11020 C. L. 1929; § 11702 C. L. 1929). Unincorporated telephone companies are subject to the provisions of the law relative to common carriers (1915 Attorney General 270; Mich. R. C. Vol. 3, No. 4, p. 5).

[2, 3] The owners of these telephone lines contend that they constitute an exception to the general rule and that the property of these rural telephone lines is not subject to public use and regulation. No one of these stockholders or copartners would think, if they owned a railroad instead a telephone line, that they might refuse to carry the property or persons of those who desired not to become members of the railroad company. Yet

this is the attitude taken in relation to telephone lines and facilities in that vicinity, in violation of the statute regulating telephone companies which expressly provides that "all laws so far as applicable now in force or that may hereinafter be enacted regulating the transportation of persons or property by railroad companies within the state shall apply with equal force and effect to telephone companies" (§ 1, Act 206, P. A. 1913). Every person must be presumed to know that in entering the telephone business they are engaging not in a strictly private enterprise, but in a public business charged with the public interest, subject to public control and in which they could not arbitrarily give or refuse to give service in accordance with their own judgment, whim, or caprice. The control over a telephone line and its use is subservient to the public interest. The respondent carrier must, therefore, hold itself ready to provide reasonably adequate service to all, members and nonmembers, without discrimination as to rates or service, who may be so located as to be within the territory of the company.

[4] Petition of the complainant also prayed for an order requiring the respondent to remove its poles from the land of the petitioner. This is a question of property rights and trespass on which this Commission under the statutes is not competent to pass. Remedy here lies in the state's courts.

STIVER v. HOLLEY

INDIANA SUPREME COURT

Don F. Stiver et al.

v.

Clarence E. Holley

[No. 27109.]

(— Ind. —, 17 N. E. (2d) 831.)

Certificates of convenience and necessity, § 49 — When required — Exemptions.

1. "Agricultural commodities" as used in the statute exempting the owners of "motor vehicles used exclusively in carrying live stock or agricultural commodities not including the manufactured products thereof" from obtaining a certificate of convenience and necessity from the Commission, includes only products of the farm, p. 188.

Certificates of convenience and necessity, § 49 — When required — Agricultural commodities.

2. Persons engaged in hauling for hire commercial fertilizer and crushed and powdered limestone are required to obtain a carrier's permit from the Commission even though fertilizer be considered within the term "agricultural commodities," since it is a manufactured product, p. 188.

[December 19, 1938.]

APPPEAL from judgment enjoining officers from interfering with the business of individuals in hauling fertilizer from plants to farmers; reversed with instructions to enter judgment for appellants.

APPEARANCES: Omer Stokes Jackson, Attorney General and Urban C. Stover and Thos. Longfellow, Deputy Attorneys General, for appellants; J. Edward Barce, Ferdinand Barce, and Hume L. Sammons, all of Kentland, for appellee.

FANSLER, J.: This is an appeal from a judgment enjoining officers of the state of Indiana from interfering with the business of the appellee and others similarly situated in hauling commercial fertilizer and ground and crushed limestone used as fertilizer

from fertilizer plants or quarries to farmers. From a judgment enjoining them as prayed, the state officers have perfected this appeal. The sole question is whether, under the statute, those engaged in hauling fertilizer are exempt from obtaining a carrier's permit or certificate from the Public Service Commission.

A solution of the question involves the construction of § 2 of Chap. 300 of the Acts of 1937 (Acts 1937, p. 1357), § 47-1213, Burns' Anno. Stats. Supp. 1938. The section in question provides that the act shall not

INDIANA SUPREME COURT

apply: "(f) To motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm, or to motor vehicles controlled and operated by any nonprofit coöperative association, or to motor vehicles used exclusively in carrying live stock or agricultural commodities, not including the manufactured products thereof." It is conceded that, unless exempted by this provision, the appellee and those in like situation are required to obtain a permit or certificate from the Public Service Commission.

It will be noted that clause (f) exempts three classes of vehicles. First, "motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm." Under this provision, the owner of such a vehicle may transport property for hire without a permit or certificate. There is no contention that the appellees come within this class. Second, "motor vehicles controlled and operated by any nonprofit coöperative association." There is no contention that the appellees come within this class. Third, "motor vehicles used exclusively in carrying live stock or agricultural commodities, not including the manufactured products thereof." The appellees contend, and the lower court must have determined, that they are within this class.

It is argued that fertilizer is an "agricultural commodity," and that, since the appellee and those in like situation are engaged in hauling fertilizer, they are exempt under this pro-

vision. We might go no further than to note that there is no evidence that the appellees' vehicles were "used exclusively in carrying live stock or agricultural commodities," and, since the appellees were the plaintiffs, the burden to produce such evidence was upon them.

[1, 2] Appellees' contention that the term, "agricultural commodities," was intended to include supplies, such as fertilizer, would compel the contention that it would also include such commodities as drainage tile, fencing, farm machinery, etc. But it is believed that the ordinary conception of the meaning of the term includes only products of the farm. See *Rodgers v. State R. Commission* (1938) 134 Neb. 832, 24 P.U.R.(N.S.) 203, 279 N. W. 800. Light is thrown upon the legislative interpretation of the words by the language of the sentence in which it is used. It will be noted that the first vehicles exempted are those controlled and operated by a farmer "and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm." If the term, "agricultural commodities," was considered as including supplies such as fertilizer, there would have been no necessity of adding the words "supplies to his farm." In the stipulation of facts upon which the case was decided, it is agreed that the appellee was engaged "in the hauling for hire of commercial fertilizer which is manufactured and compounded by various fertilizer companies at their plants within the state of Indiana, to the farmers in said state, and he also is engaged in hauling for hire and he proposes to continue to so haul crushed and powdered lime-

STIVER v. HOLLEY

stone to be used as a fertilizer." The appellees then are engaged in hauling for hire commercial fertilizer, which is a manufactured product, and crushed and powdered limestone, which must also come within the class of manufactured substances, and therefore appellees' motor vehicles would not be exempt even though fer-

tilizer should be considered as within the term, "agricultural commodities," since it is a manufactured product. But, as we see it, the term cannot be considered as including fertilizer or other such supplies.

Judgment reversed, with instructions to enter judgment for the appellants.

MISSOURI PUBLIC SERVICE COMMISSION

Re Doniphan Telephone Company

[Case No. 9649.]

Certificates of convenience and necessity, § 58 — When required — Extension into new territory.

1. A telephone company, although operating prior to the effective date of the regulatory act, must secure a certificate of convenience and necessity to extend its facilities into areas not previously served by it and in which it has not formerly been authorized to extend its line, p. 191.

Rates, § 81 — Powers of Commission — Filing schedules — Unauthorized service.

2. The Commission has no power to authorize a telephone company which has not previously secured authority to operate in a given territory, to file schedules or rates that would be applicable to the service proposed to be rendered in such area, p. 192.

[January 11, 1939.]

APPPLICATION by telephone company for approval of new rate schedule; dismissed.

By the COMMISSION: On October 25, 1938, the Doniphan Telephone Company, a corporation, and Dee A. Rice, under the assumed name of Doniphan Telephone Company, filed schedules containing certain rates and charges that are proposed to be applied to toll service furnished between the towns of Doniphan, Piedmont, Greenville, Grandin, Naylor, Neelyville, and

Poplar Bluff, Missouri; with the request that they be made effective November 25, 1938. These rates were new filings, not taking the place of any rates theretofore filed by the applicants.

Upon receipt of protest by the Southwestern Bell Telephone Company objecting to the applicants' filing of the tariffs, the rates were suspended.

MISSOURI PUBLIC SERVICE COMMISSION

ed pending an investigation by the Commission as to whether they should be authorized to become effective. A hearing was held January 3, 1939, at which time and place all interested parties were given an opportunity to be heard and the case was submitted upon the record.

In the protest filed by the Southwestern Bell Telephone Company against the authorization of the filing of the proposed tariffs, it states that toll service has been furnished by it in this territory for many years, including that in which the applicants' exchanges were located. It states that some of the service has been furnished by joint use of its lines and the lines of the applicants, and that service has been furnished during all the years the systems of the applicant company and individual applicant have been in existence. It further claims that the schedules proposed by the applicants will duplicate part of the rate schedules already filed by the Bell Company.

The Bell Company also claims that the Doniphan Telephone Company has begun and progressed to a considerable extent in the building of a toll line over which the service will be furnished and to which service the proposed tariffs will apply. It further claims that the line has been constructed in violation of the statutes of this state, in that the builders have not secured from this Commission a certificate of convenience and necessity for the construction of this line.

The evidence shows that the Doniphan Telephone Company is a Missouri corporation furnishing telephone service in the towns and communities known as Grandin, Doniphan, and Naylor in Ripley, Carter, and Butler

counties, Missouri. It also shows that Dee A. Rice, under the assumed name of Doniphan Telephone Company as owner and engaged in the public utility business, is furnishing telephone service in the towns of Piedmont and Greenville, in Wayne county, Missouri. He owns the controlling common stock in the Doniphan Telephone Company, Corporation. The schedules that the Doniphan Telephone Company, Corporation; proposed to put into effect (toll rates from Neelyville and Doniphan to Piedmont and Greenville) show that they are issued by the Doniphan Telephone Company, Dee A. Rice, president. The other tariffs proposed contain rates for toll service from Greenville and Piedmont in Wayne county to the towns of Grandin, Naylor, and Popular Bluff, towns served by the Doniphan Telephone Company, Corporation. These tariffs are shown to be issued by the Doniphan Telephone Company, Dee A. Rice, manager. Mr. Rice explained at the hearing that the schedules filed by him as manager are those proposed by him as an individual owner of the systems in Wayne county to the towns of the corporation, and that those filed by him as president are issued by the corporation and contain tariffs for toll service from the areas of the corporation to the towns in the areas in which he owns the system served by him as an individual.

The evidence shows that during the latter part of the year, 1938, Dee A. Rice, as an individual, furnished the funds for the construction of a toll line from Piedmont to Doniphan; that part of the line from Piedmont and to a point near Ellinsore in Wayne county will be owned as a part of his sys-

RE DONIPHAN TELEPHONE CO.

tem, and the remainder of the line to Doniphan will be owned as a part of the system belonging to the Doniphan Telephone Company, Corporation. He claims that a part of the line is of standard construction, of a good grade of poles, but other parts of it are only in temporary condition, the wires being attached to trees and not standard poles.

[1] The records of the Commission show that no application for authority to construct the line had been made, and the applicant as Dee A. Rice, individual, and as president of the Doniphan Telephone Company, Corporation, admits that no application was made. He further states that it was his understanding from his counsel that it was not necessary for him to secure a certificate of convenience and necessity to extend his telephone systems since they were in existence prior to the passage of the enactment of the Public Service Commission Law in 1913. He claims that under the decision of the Commission in the case of Doniphan Teleph. Co. v. Neelyville Teleph. Co. (1914) 2 Mo. P. S. C. R. 84, he is not required to make application for permission to extend his telephone lines. Therein the Commission held that under § 96 of the Original Public Service Commission Law, it is not necessary for a telephone company to secure authority to extend its lines when legally occupying and rendering telephone service in a given area. However, a decision of our supreme court in a case wherein the same principle was involved, Public Service Commission v. Kansas City Power & Light Co. (1930) 325 Mo. 1217, P.U.R.1931A, 32, 31 S. W. (2d) 67, indicated to us that a certificate should

be secured by any public utility in this state when extending its lines into areas not previously served by it and in which it has not previously been authorized to extend its line. In that case, the Kansas City Power & Light Company extended an electric line by constructing a 6-mile extension of its transmission system without first securing a certificate of convenience and necessity from the Commission. The company claimed that it was not required under § 72 of the original act to secure a certificate of convenience and necessity to construct an extension to its system where it lawfully occupied a given area. We believe the language of the court in that case is applicable to the issues raised in this case and quote the following that particularly defines the determination that should be made in the present case (P.U.R.1931A, at p. 39):

"If, as appellant contends, an electrical corporation which has a certificate of convenience and necessity to operate its plant in a given town or community might extend its lines to and furnish other communities with electricity without a certificate or authority from the Commission, the purpose of the statute would be defeated. Under such a construction of the statute the Commission would have no opportunity to determine whether or not public convenience and necessity demanded the use of electricity in the community to which the line was extended, and no opportunity to prescribe the safe and efficient construction of said extension or determine whether or not appellant was financially able to construct, equip, and operate such extension and furnish adequate service at reasonable rates in the new com-

MISSOURI PUBLIC SERVICE COMMISSION

munity, without crippling the service in the community where the Commission had theretofore authorized it to operate."

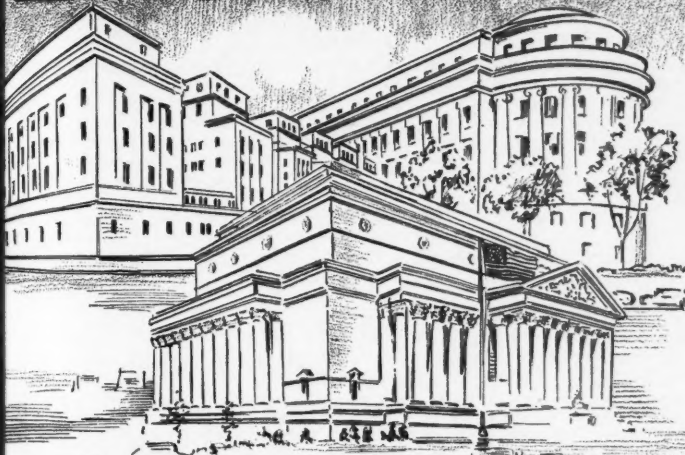
"Appellate, however, contends that there is no question of new territory or new franchise in this case; that it has had a franchise in Saline county for many years and has been operating there under authority of the Commission. There is no merit in this contention. In the first place, a franchise in Saline county would not authorize appellant to operate there without authority from the Commission. Section 10481, Rev. St. Mo. 1919. In the next place, this case is here on a demurrer to the petition, and the sufficiency of the petition must be determined by the facts alleged therein. The petition does not allege that the Commission authorized appellant to operate in Saline county, or authorized the construction of the line in question. On the contrary, the petition alleges that the line in question, which extends from Fairville to Miami in Saline county, was not authorized by the Commission. Appellant's demurrer to the petition admits this fact to be true. We, therefore, rule this contention against appellant."

[2] If the applicant as Doniphan Telephone Company, and Dee A. Rice as owner of the system operating under that name assumed, has not secured authority to operate in a given territory, the Commission has no pow-

er to authorize, either to file schedules or rates that would be applicable to the service they proposed to render. Other evidence that might be applicable in the proceeding was submitted in an effort to show that the public convenience and necessity is to be better served by the operation of the line, that the rates are not greater than those filed by the protestant, the Southwestern Bell Telephone Company; in fact, some were lower, and that the service of the Southwestern Bell Telephone Company has been inadequate and unsatisfactory. We believe that those are not issues properly before the Commission at this time. No complaint has previously been made to the Commission that the Southwestern Bell Telephone Company is not furnishing adequate toll service to the communities in question, but the Commission will take note of the complaint that has been made and proceed in an informal manner to determine what is required to provide adequate toll service for these communities. If by an informal proceeding a remedy cannot be found, a formal investigation will be made.

After due consideration of the evidence that has been presented, the Commission finds that this proceeding should be dismissed and that the applicant the Doniphan Telephone Company and Dee A. Rice, operating as an individual under the name of Doniphan Telephone Company, be directed to withdraw the proposed schedules.

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Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.



\$25,000,000 Program Planned by American Gas & Electric

American Gas & Electric Co. system will spend approximately \$25,000,000 this year on new construction, according to a recent announcement by George N. Tidd, president.

Mr. Tidd pointed out that electric output of the system was running 19 per cent ahead of last year and has averaged from 15 to 20 per cent better than a year ago thus far this year.

U. S. Gas Industry Meets in Cleveland

ONE hundred and thirty-five representatives of gas companies in all parts of the United States met in Cleveland, recently, for the first of four annual conferences of the American Gas Association's industrial gas section.

The opening sessions, presided over by Frank H. Trembly, Jr., of Philadelphia, were devoted to technical papers and discussions on how to increase industrial gas sales.

Wendell E. Whipp, president of the Monarch Machine Tool Co. of Sidney, O., and president of the National Machine Tool Builders Association, was the principal speaker at a luncheon.

Sessions were also devoted to the reading of other technical papers, a technicolor motion picture, "Steel," presented by the United States Steel Corp., and panel discussions on the application of gas to the ferrous metals industry, non-ferrous metals, ceramics, food and industrial and commercial air conditioning.

United Light & Power Proposes \$15,613,417 Program

UNITED Light & Power Co. system, including American Light & Traction Co., has budgeted construction expenditures for 1939 of \$15,613,417. Of this amount \$10,249,541 is scheduled to be spent on electric properties, \$4,281,402 on gas properties and the remainder on transportation, heat, ice and water properties.

American Light & Traction contemplates the expenditure of \$4,643,516 for construction. Continental Gas & Electric will spend \$8,836,806. Construction expenditures for direct operating subsidiaries of American Light & Traction will total \$2,089,322, and those for operating subsidiaries of United Light & Railways, \$43,773.

Parker Elected Vice President Pittsburgh Equitable Meter

COL. W. F. Rockwell, president of the Pittsburgh Equitable Meter Company, has announced the election of Walter H. Parker as vice president of the company. Mr. Parker has been manager of the Liquid Meter Division for a number of years. In his new capacity he will have charge of all manufacturing operations in the two Pittsburgh plants as well as the factory in Hopewell, New Jersey. Mr. Parker, previous to becoming associated with the Meter Company in 1929, served as chief engineer for the Fry Equipment Company of Rochester, Pa.

Public Service Electric & Gas Plans Extensions

AMONG the principal improvements planned for the Gas Department of the Public Service Electric and Gas, Newark, N. J., is the increasing of the generating capacity of Central Gas Works at Raritan from 4,000,000 to 10,000,000 cubic feet daily. This will provide an increased gas supply in the Central Division and part of Essex Division of the company's territory.

G-E Announces New-Type Copper-Oxide Rectifier

ANEW type copper-oxide rectifier for oil circuit breaker operation is announced by General Electric. Rated 50 amperes, 120 volts d-c, 220 volts a-c, for two cycle operation not exceeding four per minute, the new unit has been developed to supersede the former 3-ampere unit, or multiple combinations of such units.

With its 50-ampere rating, one of the new rectifiers can replace 16 or 17 units of the previous design. It requires less space and eliminates possibility of trouble due to improper balancing or dividing of current through numerous parallel paths.

A lower working potential of 16.4 volts, as compared with 22 volts in the old design, is obtained by using 14 oxide washers in each leg of the new rectifier instead of the ten previously used. This gives a 40 per cent increased factor of safety in each leg.

Washers of the new rectifier are coated with metallic conducting material on the oxide, and held together in good contact with about 300

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lb. pressure. The disk assembly is sealed against atmospheric conditions and is moisture- and corrosive-gas proof.

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ASTM Publishes Standards On Insulating Materials

ALL of the 40 specifications and test methods on electrical insulating materials issued by the American Society for Testing Materials are included in its 1938 edition of Standards on Electrical Insulating Materials. The book also includes the report of Committee D-9 outlining major phases of its work and giving proposed revisions. Statements concerning the significance of various tests—Dielectric Strength Test, Resistivity Test, Power Factor Test, Impact Test, and Tensile Strength Test.

Copies can be ordered from the American Society for Testing Materials, 260 South Broad Street, Philadelphia, at \$2.00 each.

Consolidated Edison Opens Drive to Sell Refrigerators

THE Consolidated Edison system has launched a four-month campaign to place an automatic refrigerator in each of 1,000,000 homes in the New York area now without one. A minimum goal of \$10,000,000 sales has been set.

The refrigerators will be sold on the basis of small additions to the electric bill in each month, according to Mr. Floyd Carlisle, chairman of the system. Mr. Carlisle also stated that while such a plan has been tried successfully before, it has never been carried on so broad a scale as the one now being conducted.

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Southern Utah Power Co. Plans \$100,000 Construction Program

HYDRO plant and transmission line reconstruction amounting to \$100,000 has been announced by Reid H. Gardner, general manager of the Southern Utah Power Co., at Cedar City, Utah.

Larger conductor will be installed on 30 miles of transmission lines and new poles and crossarms on 15 miles. A small hydro plant at Veyo will be completely rebuilt and voltage regulators and new circuit breakers installed at different points on the company's system.

D. S. Funk Becomes Head of Sangamo Electric Co.

DONALD S. FUNK, vice president and general manager of the Sangamo Electric Co., Springfield, Ill., was recently elected president and general manager. Mr. Funk succeeds the late Robert C. Lanphier as executive head of the company.

Diesel Booklet Offered by Dodge

CURRENT interest of the transportation world in the Diesel engine has caused the Dodge Division of Chrysler Corporation, Detroit, to issue an illustrated booklet, "Dodge and Diesel."

The texts presented in "Dodge and Diesel" explain and drawings illustrate what the Diesel engine is and how it operates. Facts about the "Full Diesel" and the "Semi-Diesel" and between "Four and Two-Cycle Diesels" are also set forth.

Copies of the booklet may be secured from the Truck Sales Department of the Dodge Division of Chrysler Corporation.

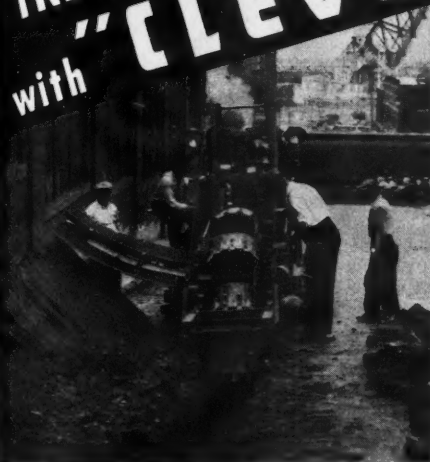
High-Voltage Coil Tester Designed by G-E

ANEW coil tester designed by the Special Products section of the General Electric Company provides a simple means for testing the turn-to-turn insulation of a coil, by inducing in the coil a voltage many times normal, according to a recent announcement.

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A United States Senator said to us the other day: "Help us to create a sane sentiment on

public spending and borrowing. Citizens—and too often your businessmen—make it hard for us when they say 'We're for economy, but—don't cut my pet activity'."

• • • • •

DURING the Great War two soldiers in the trenches were talking:

"We'll win," said one, "if they'll only hold out."

"They? Who?" said the other.

"The civilians back home," replied the first.

We'll get tax reduction if and when the civilians back home demand it and, as Senator Borah once said, become indignant and even angry if they don't get it.

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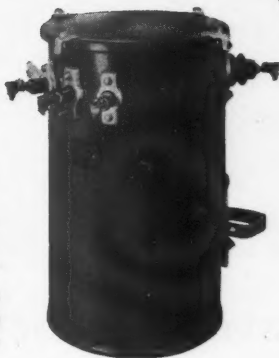
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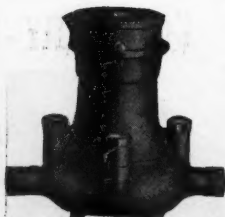
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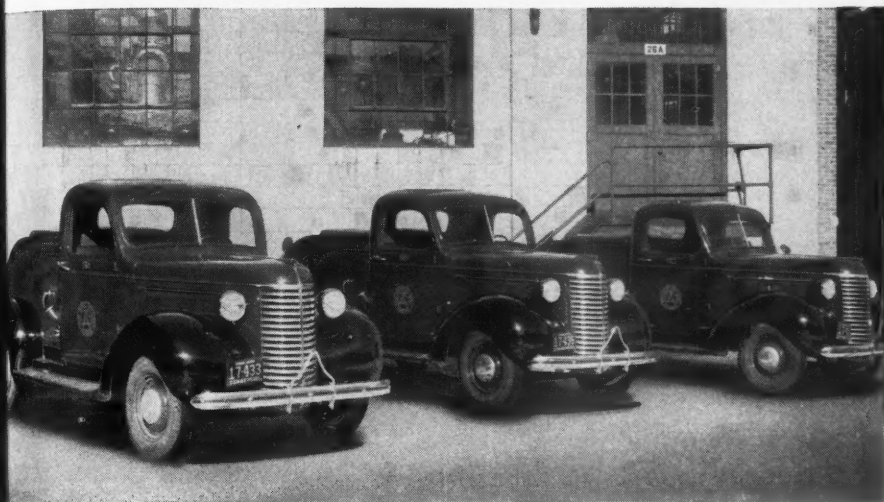
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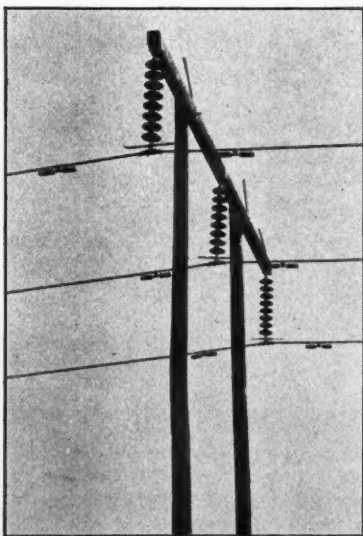
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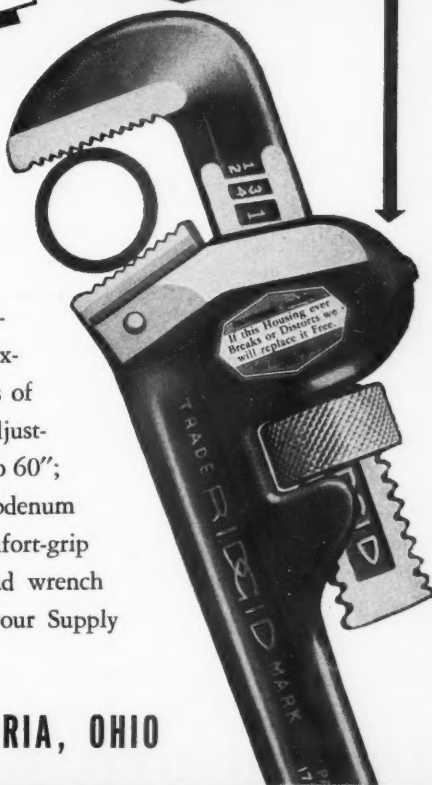
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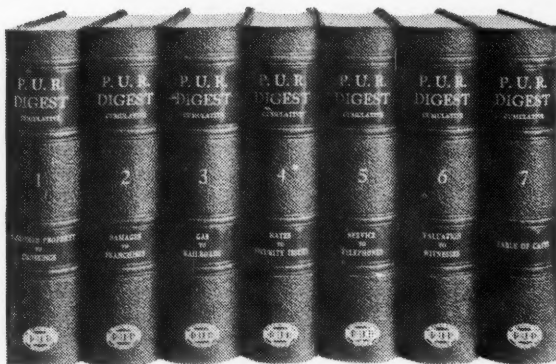


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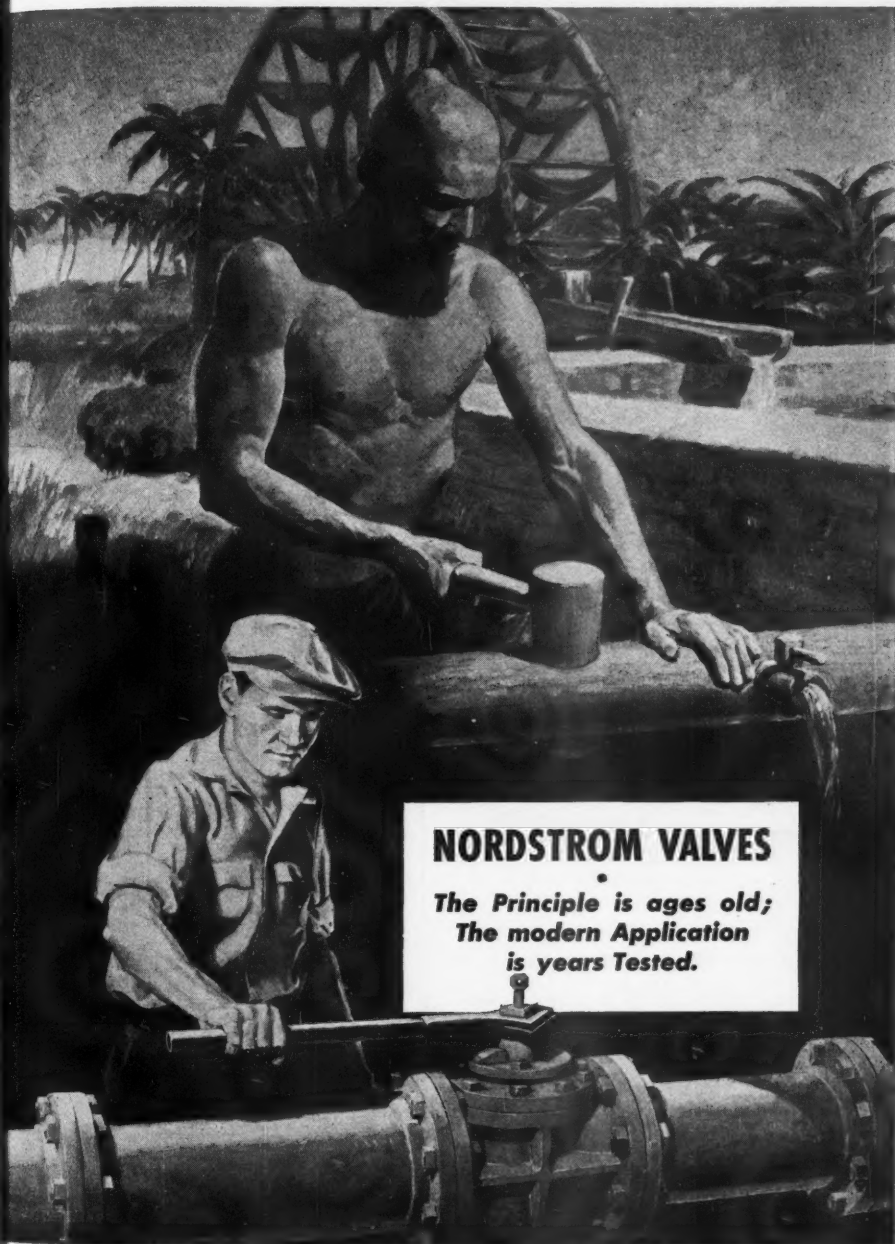
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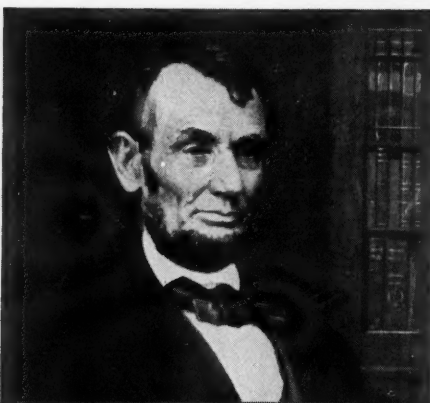
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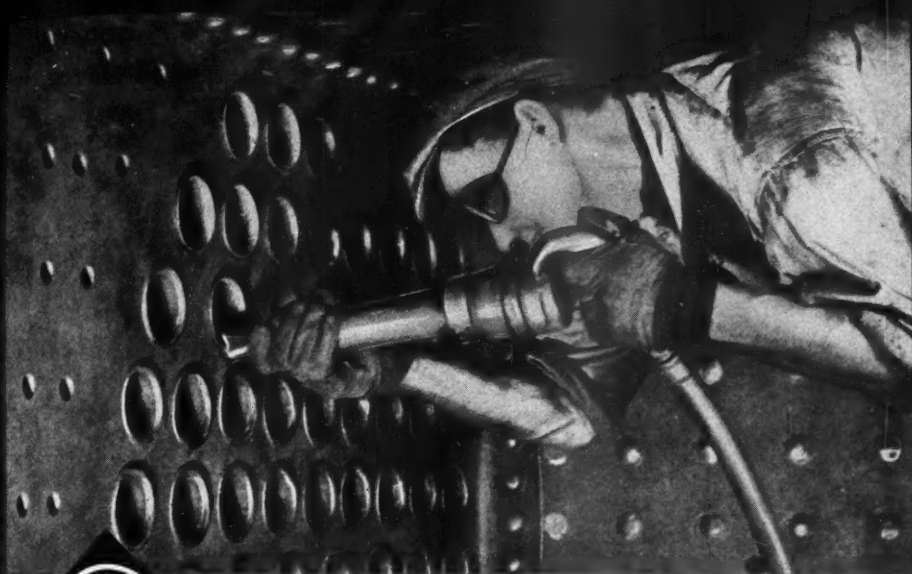
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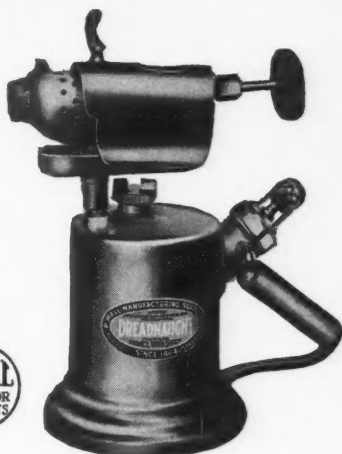
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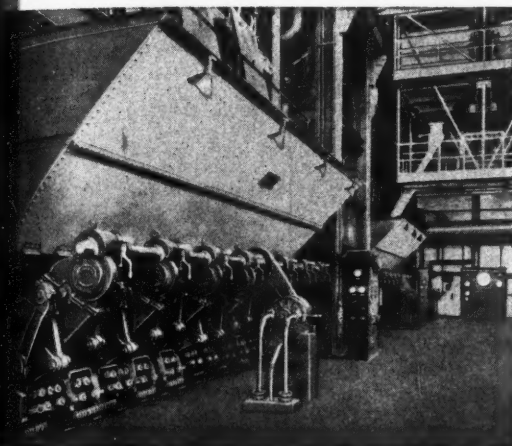
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BEFORE the road surface was treated

BRIGHTER light—bright enough to help turn drivers and pedestrians into even stronger boosters for lighting—and *more efficient* light to gain the support of those responsible for the public budgets are *both* promised the industry by the progress illustrated in the pictures above.

It's hard to believe that the two pictures show the *same* roadway illuminated with exactly the *same* lighting equipment giving the *same* number of foot-candles of illumination. What makes the lighting in one case so much more effective?

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They tested the lighting on one type of road surface in common use. And they found that, although the lighting was theoretically adequate, much of it

AFTER it was treated

was being absorbed, wasted. So they "glued" of granite to the pavement with a layer of. The results were astounding. Visibility Better, more effective illumination—*without change in the lighting itself.*

Some highway engineers have seen in the a way to increase safety on the highway. They now working out a plan for co-ordinating the of the lighting equipment with the of the road at the time of building. They see the possibility of making simple and important changes on existing roads to make the lighting effective. And with lighting efficiency increased, good lighting consequently a better buy, the industry strides ahead in its ability to serve the

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